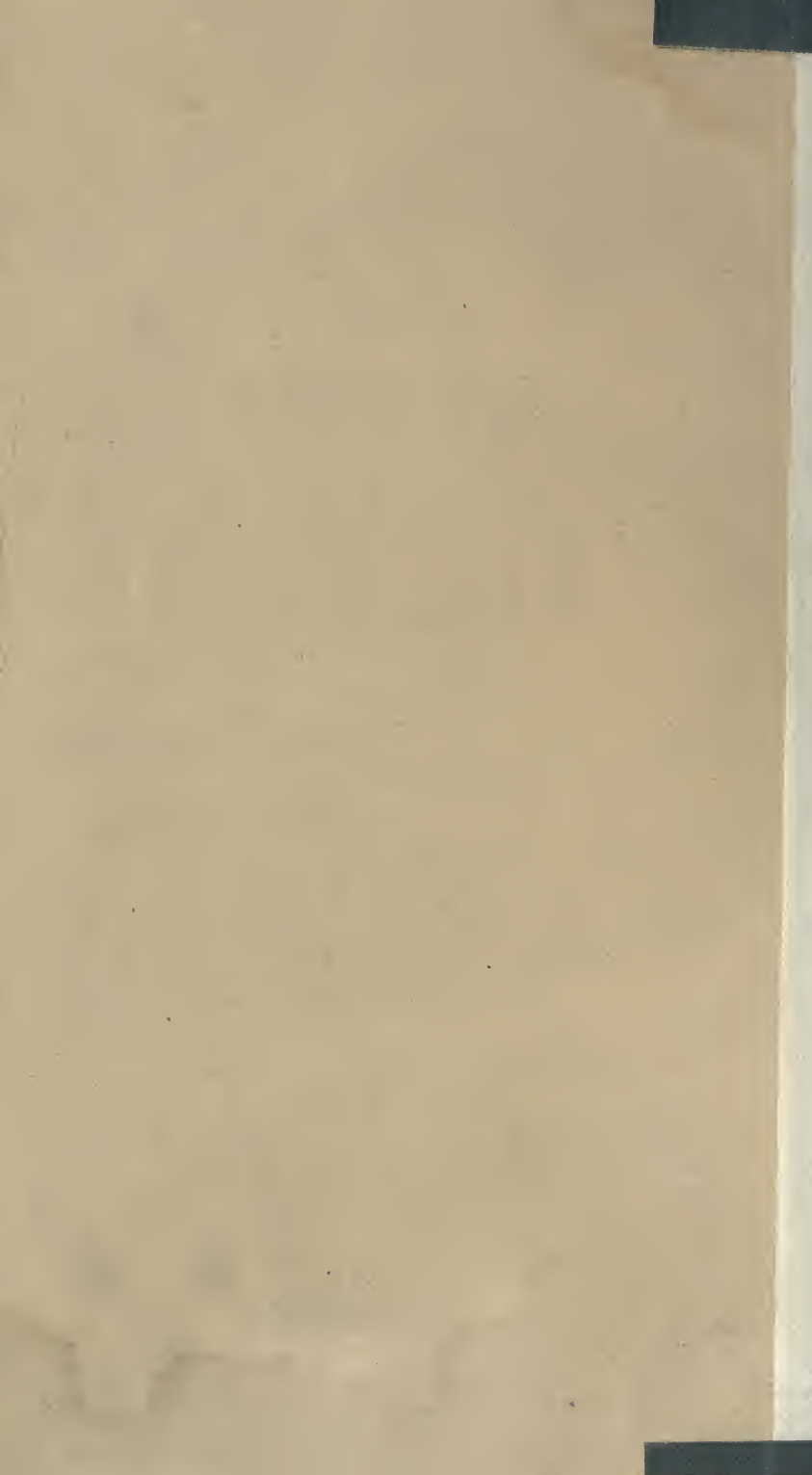
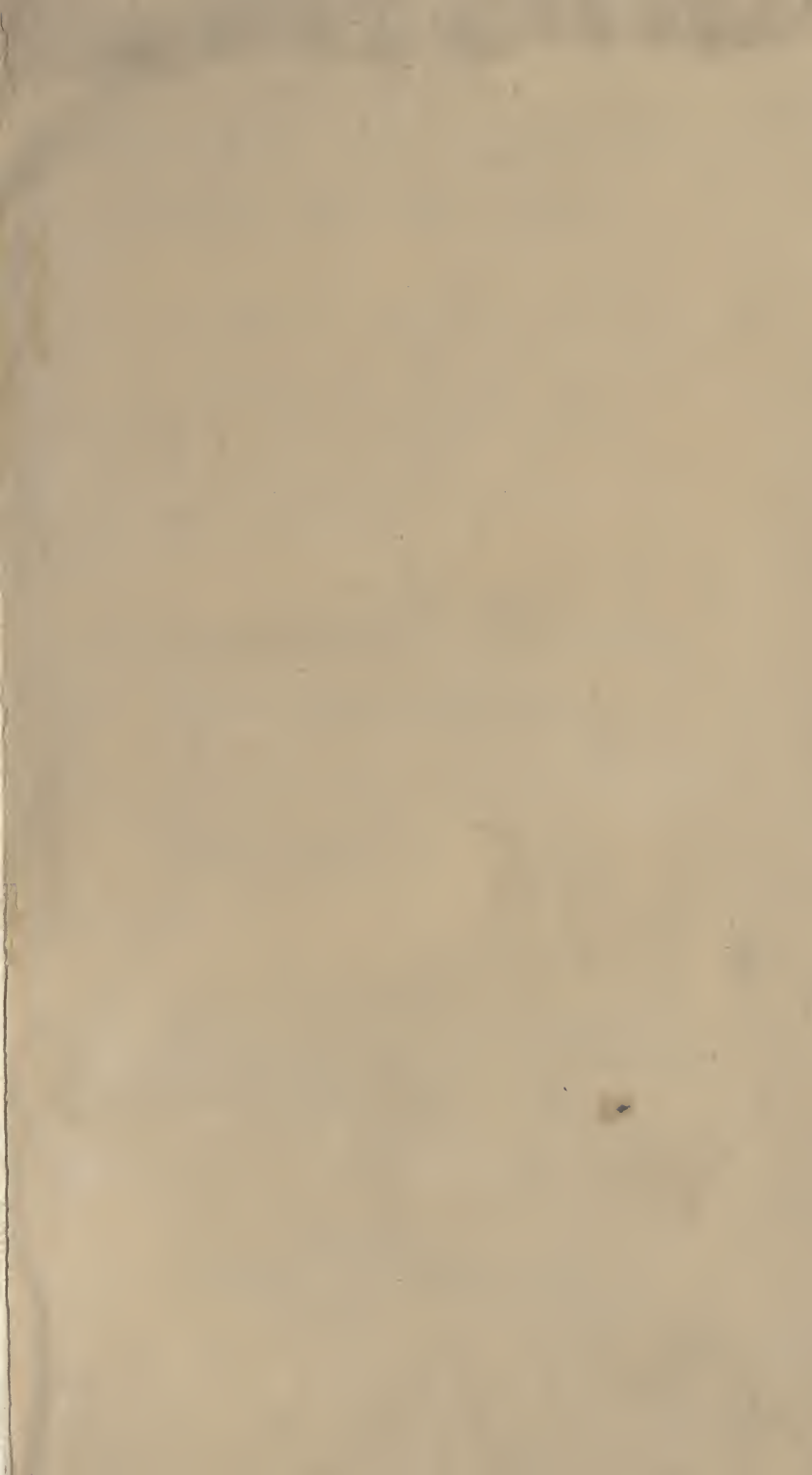


3 1761 04043 2940







Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

GOVERNMENT BY COMMISSIONS ILLEGAL AND PERNICIOUS.

THE NATURE AND EFFECTS OF ALL
COMMISSIONS OF INQUIRY
AND OTHER CROWN-APPOINTED COMMISSIONS.

THE CONSTITUTIONAL PRINCIPLES OF
TAXATION ;
AND THE RIGHTS, DUTIES, AND IMPORTANCE OF
LOCAL SELF-GOVERNMENT.

By J. TOULMIN SMITH, Esq.,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

"It is not almost credible to foresee, when any maxim OF FUNDAMENTAL LAW of this realm is altered, what dangerous inconveniences do follow."—*Coke, 4 Inst. 41.*

"New things which have fair pretences are most commonly hurtful to the Commonwealth ; for commonly they tend to the grievous vexation and oppression of the subject, and not to that glorious end that at the first was pretended."—*Coke, 2 Inst. 540.*

LONDON :
S. SWEET, 1, CHANCERY LANE.

1849.

SEEN B
PRESERVATION
SERVICE



883823

PRINTED BY RICHARD AND JOHN E. TAYLOR,
RED LION COURT FLEET STREET.

JN

407

S55

PREFACE.

THE present work gives the result of no sudden impulse. The rapid strides which CENTRALIZATION has been making in this country for the last few years can have been viewed by no one who has carefully studied the history of the growth and development of the national energies, and who indulges any generous feelings, without profound anxiety. The deep impressions thus derived have led me, on some recent occasions, to make what efforts an individual, unaided and at his own expense, was able, to oppose certain measures having this centralizing tendency. The circumstance of my having thus sacrificed no trifling amount of time and money, without the slightest prospect or probability of any personal remuneration, will at least be evidence of the earnestness of those endeavours, and of the present one.

It was impossible for me, in the course of those efforts, to shut my eyes to the fact, that, though the instinctive sense of the iniquity of a course which is

no less an outrage upon Common Sense than a flagrant Violation of the Law, exists, strongly felt, in very many minds, yet the principles which lie at the bottom of the question,—which afford demonstration as well of the mischiefs as of the actual illegality of the system of Centralization*,—are not clearly apprehended by many. It seemed to me that an attempt to put those principles into some accessible shape would be a task which could not fail, if reasonably well executed, to be of utility. It had been my earlier intention to execute that task in another form, and through another medium, than in a separate volume. Fuller consideration, however, leads me to think that the latter will be the more useful course.

It is proper to say that, the present work being intended for the *general* reader, I have endeavoured to encumber the pages with as little as possible of that citation of authorities which is always repulsive; and have confined quotations to writers and authorities so

* Since the French Revolution of February 1848, many persons who previously held very different opinions have awakened to a consciousness of the mischiefs of Centralization. Convictions arrived at by a careful study of principles will be more enduring, and may be presumed to be more sound, than those merely resulting from the sight of a terrible catastrophe. I beg, therefore, to refer the reader to my “Laws of England relating to Public Health,” which was written and published before the earliest indications of that Revolution had been heard, and in which the system of Centralization is denounced as strongly as anywhere in the following pages. See the index to that work, “*Centralization, system of, unconstitutional and pernicious.*” Nor was that the first publication in which I had expressed the same opinions.

universally known, or of such direct and important bearing upon the subject, that their value will be at once admitted by every reader.

I am aware that Illustrations are usually more attractive than the discussion of Principles. While, however, I have felt it necessary to include in this work certain illustrations, in order the more fully to show the bearing of certain principles, I am anxious to have it understood that the most important part will be that in which Principles are discussed. I allude, especially, to Chapters II. and III. of the first Book. The most important parts of the second Book are, in my opinion, the third and fourth Chapters.

I would allude to one more point :—The matter discussed in these pages relates to a System, not to Individuals. It unfortunately happens, however, and it is one of the great and inherent vices of that system (though a not unmeditated incident to it), that individual interests are so essentially and deeply interwoven with its maintenance and extension, that it is extremely difficult to expose the mischiefs and illegality of the system itself without seeming to have reference to individuals. But personalities of all kinds are exceedingly distasteful to me ; and it has been my studied object to avoid them. I believe that, so far as was possible in dealing with such a subject, I have avoided them. Should I, in any place, have been betrayed into any appearance of them, I shall myself be the one the most deeply to regret it. Of course I

can neither avoid, nor shall I ever stoop to apologise for, expressions which, directed to a general and pernicious system, shall be felt, by those who know the actual movers in any particular transactions, or by those movers themselves, to fix upon the latter. It is not my fault should the facts be sometimes such that it is impossible, without appearing to implicate individuals, properly to discuss matters which are of the deepest interest and importance to the integrity of the social and national union ; to the maintenance of peace and good order ; and to the preservation of the people of this country from such outbreaks as the prevalence of the fast-encroaching and all-grasping system of *Centralization* has, within the past year, brought on in many nations of the Continent of Europe.

8, Serjeants' Inn, Temple,
10th February, 1849.

CONTENTS.

BOOK I.

PRINCIPLES.

CHAPTER I.

GENERAL VIEW OF THE SUBJECT.

	Page
Fundamental Law necessary to national existence	1
Origin and sanction of the fundamental law	2
Importance of recognition of the fundamental law	4
Tendency to encroachment on the fundamental law	6
Earnestness necessary for its maintenance	8
Different motives to encroachment	10
Character of present encroachments	12
Difference between progress and revolution	16
Composition and uses of packed Commissions	18
All progress obstructed by packed Commissions	20
Occasions and variety of packed Commissions	22
<i>Ex-parte</i> cases got up by packed Commissions	24
Division and treatment of the subject	29
Spirit and institutions ensuring human progress	32

CHAPTER II.

FUNDAMENTAL LAWS AND INSTITUTIONS OF ENGLAND RELATING TO THE MAINTENANCE OF THE BODY POLITIC.

Property dependent on law	34
Temporary regulations should illustrate permanent principles	36
Fundamental character of permanent principles	38
Actual sanction of fundamental laws and institutions	40
Admitted sanction of fundamental laws and institutions	42
Declared sanction of fundamental laws and institutions	44
Elements of the fundamental laws and institutions	46

	Page
Fundamental institutions of local self-government	49
Local self-government the groundwork of freedom	52
Fundamental law of responsibility	54
William the Conqueror	57
William the Conqueror subjected to Anglo-Saxon law	59
Re-confirmation of the laws of King Edward the Confessor	60
Declaration of fundamental institutions of local self-government	62
Declaration of fundamental law of responsibility to the nation	64
Henry I.: Stephen: Henry II.	66
Magna Charta	67
Re-declarations of fundamental laws and institutions	68
Violators of Magna Charta excommunicated and accursed	70
Re-declarations of fundamental laws and institutions	72
Violators of liberties excommunicated and accursed	76
Unqualified and uncompromising guarantees insisted on	78
Re-declarations of fundamental laws and institutions	80
Illegality of all new offices created by the crown	82
Commissions by election the only legal ones	84
Re-declarations of fundamental laws and institutions	86
Petition of Right, its character and spirit	88
Essential principles of fundamental laws and institutions	91
Bill of Rights	93
Practical violations, though forms observed	94
Smuggled acts of parliament	96
Incorrect engrossments	97
Actual and not nominal consent to statutes	98
Attendance in parliament	100
Empirical law-making	101
Declaratory statutes	103
Importance of inviolability of fundamental laws	104

CHAPTER III.

FUNDAMENTAL LAWS AND INSTITUTIONS RELATING TO THE RIGHTS OF PERSON AND PROPERTY OF INDIVIDUALS, AS INDIVIDUALS.

Certainty all-important	106
Essential requisites of all truth-seeking	108
Mere massing of facts is useless and deceptive	112
Universality of the canons of truth-seeking	114
Use of party	115
Use of <i>ex-parte</i> counsel	116
Always more sides than one	117
Truth-seeking forwarded by local self-government	118
Essential principles of trial by jury	120
Trial by jury one illustration of a principle	122
Changeless importance of trial by jury	124

CONTENTS.

ix

	Page
Influence of jury system	126
Importance of legal methods	127
Protection afforded by local self-government	128
Protection by jury	130
Jurors not witnesses	131
Presentment and trial by jury both essential	132
Magna Charta and the jury system	134
Unlessened importance of Magna Charta	136
Publicity essential to every proceeding	138
Impartiality essential	140
Presentment by grand jury	141
Rigid impartiality of the fundamental laws	142
Impartiality re-guaranteed	144
True function of juries	145
Distinctive characters of inquests and juries	146
Qualities of a juror	148
Petition of Right	149
Commissions denounced by the Petition of Right	150
Prohibition of Commissions and other usurpations	152
Bill of Rights	154
Right of challenge essential to the jury system	155
Summary of protections to person and property	158
Unity of the whole system	160
English liberties no novelty	161
Results of centralization	162
Saxon institutions	163

BOOK II.

ILLUSTRATIONS.

CHAPTER I.

OF COMMISSIONS OF INQUIRY.

Commissions of Inquiry a violation of the law	165
Characteristics of Commissions of Inquiry	168
Commissions of Inquiry opposed to truth-seeking	170
The truth-teacher and the dogma-preacher	172
How to coerce public opinion	174
How to coerce opinions "by authority"	176
Convenient uses of Commissions of Inquiry	178
Legal methods of special and general inquiry	180
Violations of the fundamental laws and institutions	182

	Page
Unlawful administration of oaths by Commissions	187
Unlawful new courts created	193
Deceptive nature of the "return" as to Commissions of Inquiry	194
Cost of Commissions of Inquiry	196
Poor Law Inquiry Commission	197
Manufactured "Reports"	199
Municipal Corporation Inquiry Commission	200
Gross illegality of that Commission	202
Opinions of Lord Abinger, Sir W. Follett, and Lord Coke	204
All such Commissions against law	206
Criminal Law Commission	207
Constabulary Force Commission, its nature and results	208
Law of Marriage Commission	210
Tidal Harbours Commission	212
Metropolitan Sanatory Commission	213
Metropolitan Sanatory Commission ; its disinterested self-denial	216
How to manufacture evidence	221
Publications and infallibility of the Metropolitan Sanatory Commission	226
Jobbing by Commissions	228
Preliminary Inquiries' Act	229
How to get up cases by preliminary inquiries	232
Illegal system must be proscribed	234

CHAPTER II.

OF ADMINISTRATIVE COMMISSIONS.

Fundamental laws superior to Act-of-Parliament Commissions	235
Fundamental laws superior to all ordinary tribunals of law	240
Lord Coke on the supremacy of the fundamental laws	244
Fundamental laws superior to Acts of Parliament	248
Multitude and characteristics of Crown-appointed Commissions	250
Cliques ; patronage ; and taxation	252
Responsibility must be undivided	253
Undivided responsibility always essential	254
Parliament superseded by Crown-appointed Commissions	256
Dangers from centralization	258
Commissions denounced by the fundamental laws	259
Excise system	260
Woods and Forests	268
Example of Henry VIII. followed by Woods and Forests	271
Whittlewood Forest.	273
Whychwood Forest.	275
New Forest	275
New Park Farm	277
Heavy duties of officers	278

	Page
Killing "the king's fat deer"	279
Infallibility of Woods and Forests	280
Loans and solicitors	281
New claim to foreshore of rivers, &c.	282
Metropolitan Buildings' Act	283
Ecclesiastical Commission	284
Audit Commission	286
Metropolitan Police	288
Mutual peacepledge	289
Acts of Parliament superseded	290
Poor Law Board	291
Sub-Commissioners; Inspectors, &c.	292
Ten Hours' Bill	293
Inspectors and Roving Commissions	294
Public Health Act neither practical nor sincere	296
The ancient and applicable law	298
Self-seeking arbitrary designs	299
What might have been done	300
What has been done	301
Public Health Board	302
Nuisances' Prevention Act	303
Health by Act of Parliament	304
Express provisions for jobbing	305
Military survey of London	306
British Museum	307
Progress and improvement	313
Commissions irresponsible	315
Fettering of all energies	316

CHAPTER III.

OF LOCAL SELF-GOVERNMENT.

Social duties cherished by local self-government	317
Why rights of towns, &c. so often re-declared	320
Recognitions of local rights	322
London in Anglo-Saxon times	323
Saxon statute of William I.	325
Saxon statutes of Eadward and William	326
Portreeves annually elected	328
The "law-worth" man	329
The law-worth man's child	330
Importance of this statute	331
Long unflinching steadfastness of the City of London	333
Corporation of London, trustees no less than present holders	334
Right of folk-mote	336
Corporation Reform Act	337

	Page
Corporation Reform Act a mere delusion	338
Should be no division of local authority	340
Animosities engendered by Corporation Reform Act	342
Local Self-Government; energies undeveloped without it . .	344
Depressing effects of centralization	346
Public works	348
Duties as well as rights	349
"Parish squabbles"	350
"Convenience" of centralization	351
Importance of legitimate expression of public opinion . . .	352
Mutual intercommunication	354
Habit of thinking	355
Social charities	356
Local self-government essential to progress	358
Examination before the Metropolitan Sanatory Commission .	359

CHAPTER IV.

LAWFUL METHODS OF SPECIAL AND GENERAL INQUIRY.

Importance of self-dependence	366
Self-depending energies; their restraint and encouragement .	369
Local institutions and parliament	370
Proceedings on private bills	371
Functions of parliament and of local self-government . . .	372
Inquiries by parliamentary committees	374
True inquiry and progress	378
Retrogression or progress?	379

GOVERNMENT BY COMMISSIONS

ILLEGAL AND PERNICIOUS.

BOOK I.

PRINCIPLES.

CHAPTER I.

GENERAL VIEW OF THE SUBJECT.

“The whole history of the Constitution. abounds with proofs how easily absolute power may be exercised, and the rights of the people, best secured by law, be trampled upon, while the theory of a free government remains unaltered.”—Lord Brougham’s Political Philosophy, vol. iii. p. 293.

THE recognition of some Fundamental Law lies at the root of all civil society and national union. This fundamental law will differ in different countries; but there can be no national existence without the recognition and admitted sway of some leading idea as to the modes of the relation of the different individuals and classes of society to each other. It is this idea which gives shape as well as sanction to the fundamental law of each such nation. To the actual well-being, prosperity and progress of any state, the permanence and cheerful recognition, by all the members of the state, of that fundamental

law is the first essential. Anything which tends to lessen confidence in the permanence of that law, anything which exposes its authority to doubt or disregard, must, of necessity, tend to the disorganization of society, and, thereby, must give a check to the development of whatever resources and whatever elements of progress the particular fundamental law and condition of society in any country might, otherwise, have protected or afforded.

It may undoubtedly happen, that, under some constitutional peculiarities, a fundamental law may exist adapted not to human nature in general, but only to that particular and narrowed condition of it. In such cases gradual modifications of the fundamental law must take place. But even in such cases all modifications must be gradual to be beneficial, and that they may not tend to produce disorganization instead of progress. Where the fundamental law is adapted to human nature, and not to a narrowed specialty of that nature, that law will be unchangeable, and its perpetual reverence and recognition is the only sure beacon to human elevation and progress. The best test of the truthfulness of the idea on which any fundamental law is based, is the time during which it has endured and given sanction to the fundamental law of any nation, and the fruits which its prevalence has produced.

The physical and moral constitution of the race forming the greater part of any nation will necessarily lead to the fundamental law of that nation. A warm climate and a sluggish temperament will naturally induce a disposition to follow rather than to lead, to depend on others rather than on personal efforts, to submit to an autocracy rather than to maintain the

right to self-government. Other special circumstances may, for a time, have a similar result. Thus it may happen when a tribe or a race has suffered signal defeat by an incursive foe, and, their spirit being broken by suffering and loss, submission has become the only terms of life. While such a population remains scattered and thin, the autocracy may continue to exist even in a climate and with a national temperament very different from that first named. And a similar distaste for self-exertion, a similar disposition to leave matters and the management of affairs to others, will grow up from an indulgence in luxurious habits and a regard rather for personal ease and gratification than for the active discharge of those duties which every man owes to his fellow men. In every civilized country these last conditions will have more or less effect, from time to time, upon certain classes and individuals; and this circumstance will not be without important consequences.

A less genial climate and an active temperament will always induce a general determination to self-exertion and to self-dependence; will induce a jealousy of the interference or assumed authority of others; and will only allow of that interference or authority to such an extent as seems to be necessary for the full putting forth of the individual and self-depending energies.

The fundamental law of nations thus differently constituted will differ most widely; yet each may be the best adapted for a time, and under given conditions, to develop the resources, and aid the progress, of the great human family. It cannot be doubted that such is the case; and to preach a wholesale crusade of li-

berty and equality betokens as little true philanthropy as it does study of human nature and confidence in the wisdom of man's maker. If Progress be the great law of humanity—a doctrine the most cheerful for man and the most ennobling to the idea of his maker—each forward step must have left behind it something less noble, but the existence at one time of which was necessary to that very chain of progress. Some races will, from natural constitution, make these steps more rapidly than others. But all advocates of violent changes are certainly enemies and hinderers of progress, and not its promoters.

Where the fundamental law of a country is that of an autocracy or absolute monarchy—that is, that the will of one individual ought to be, and is by right, the guide and authority to the whole nation—the completeness and efficiency of the machinery put in operation for making known and carrying out that will are the main subjects of observation. Since everything depends upon the will of one man, any inroad upon such a fundamental law, anything by which it becomes gradually modified, can only be in the way of progress, and tend to the elevation of individual and national character. But it is very far otherwise with the fundamental law which will belong to the second class above indicated. Under such a law, it is the will of the nation which is supreme, not that of any individual or class. Authority is entrusted to any individual, or number of individuals, only in order that fuller and freer means and opportunities shall be afforded to every member of the state to exert every energy and power which he possesses. That authority, according to this fundamental law, is only to be

exercised in such way as the will of the nation permits. Instead of what is called the "government" of such a nation representing a power superior to, and having by right the control over, the will of the nation, that government depends for its very existence solely upon that will. It exists only for the purpose of more conveniently carrying out that will into action. And any attempt to act independently of that will ; to lessen responsibility to that will ; to deprive the public of the means of forming that will healthily upon just and sound data ; to give a special or false direction to that will by any specious pretences or representations which the accidental possession of authority may afford the opportunity of spreading ; to smother the expression of that will ; to magnify the schemes or notions of individuals into manifestations of that will ; is committing a violence upon the fundamental law of that state ; is an act and encouragement of Retrogression instead of Progress in human affairs ; throws on those who attempt it, or permit it, a fearful responsibility ; and must, sooner or later, lead to the gravest consequences.

But it is by no means necessary, or just, always to attach personal blame or criminality to individuals who may be active in this work of retrogression. Still less is it wise or justifiable to despond or doubt for a moment of the triumph of the great law of Progress, whatever the event of the hour, or the tendency or attempts of the government of the day, may be. On the contrary, it should always be remembered that, in a highly civilized country, those retrogressive influences which have been already alluded to, will be, at all times, more or less at work. The selfishness or

the indolence which accompanies luxury and a high state of refinement will indeed often, and even unconsciously, take the form of a spurious and sentimental philanthropy, which, while it undoubtedly imposes upon those who yield to it, must always be in the highest degree pernicious to the well-being and progress of the human family.

It is the universal and easily-understood tendency of those in power, whatever may be the principles they profess, to endeavour to extend that power. They often really intend to use that power for the benefit, as they believe, of their fellow-men, and naturally incline to think by no means lightly of their special capacities in that behalf. Those professed, and often real, intentions mislead many into submission to their encroachments on the fundamental law; whose sacred observance is, however, essential to lasting prosperity and true human progress. It is obviously, however, the duty of every good citizen, while he would never be blind to the illegal attempts of those who happen to be in authority, never to allow himself to despond or dwell unhopefully on the course of events, but to exert himself by every means to point out in what way it is that the operation of the great law of human progress is being checked, and in what way the fundamental law of his country is being violated by those to whom is committed the charge of carrying into execution the national will. It is only by looking such violations in the face that they can be prevented reaching to a dangerous height. Violations, or attempted violations, will always be going on, and the most evil part that any man can fulfil to his country is to let such violations pass unobserved until that height is

reached whence it becomes essential to the further existence of the body politic that their perpetrators should be removed, and the supremacy of the fundamental law be restored, by force.

The fundamental law of the English nation belongs to that class to which allusion has been last made, of which indeed it was long the only, and is still the truest representative. It proclaims the *right and duty* of the full and free exercise of every individual energy; so much special authority only being entrusted to any single person or persons as is necessary for the more freely and fully developing of the energies of the whole community;—that authority best carrying out the will of the people in certain particular and general objects. But there always has been, and always must be, a lodgment of such authority in some hands. No “six points,” or any multiple or fraction of the six can ever get rid of this necessity. And while those in whose hands such authority is lodged are human, it must always be expected that attempts will be made to exceed that which is entrusted, and to violate, more or less, the limits within which it ought always to be kept. It is equally idle to give way to despondency, and criminal to have recourse to any violent measures, in consequence of such violation. Nay, it is a wise provision that that tendency to violation should always exist, as it is in the opposition to that tendency that is best learned the value and importance of the fundamental law so violated. The only course, then, which a real well-wisher of his country will pursue, is to try thoroughly to understand what the true limits of that authority are, how any departure from them may at once be recognized, and, further, how it may best

be restrained ; and to do his best towards so restraining it. It would no doubt be a very pleasant thing if we could all pass through the world without any conflict or strife, without putting forth our strength to oppose any special wrong, or to maintain any special right. It is the tendency of a high state of civilization and refinement to induce that habit of indolence, and indisposition to sustained exertion, which encourage the wish for such a state of quietude, and to submit to much rather than disturb it. But such a state of quietude is clearly not the lot of humanity, or at any rate of progressive humanity. The unlettered ploughman, untroubled alike by political discussion and by religious or scientific controversy, probably passes, if well-fed, the most quiet and easy life of any man. But is his lot the most to be envied ? The more highly educated is any man, the more keenly will he be alive to all those matters of discussion and controversy ; for the more deeply will he feel their importance, and that continual activity and energy are necessary to attainment of any good end. We must all *earn* and *maintain* our independence if we would have it. And we can only earn and maintain it by continual exertion and ceaseless watchfulness. And, the more enviable the condition of our nation, the more does it need that continual exertion for its maintenance, and that ceaseless watchfulness against its invasion.

There is no time in English History in which the attempt has not been made, and been making, to encroach on the limits of whatever special authority has been entrusted to individuals. From time to time such encroachments have been more or less strenuously

resisted, and so has the fundamental law been maintained in its entirety ; for such resistance is necessarily, where earnest, always successful. It is, then, uttering no new theory, putting forth no note of alarm, to say that such encroachment is going on at the present day at least as rapidly and as deeply as ever it has done at any former period of our history. It is the object of this book to show the particular mode in which such encroachment is going on. But the remarks which have been already made have been so made that it may be clearly understood, in the first place, that it is not pretended to brand individuals or any government with special delinquency or bad faith ; and, in the second place, that there is no intention of sitting down to deplore the state of things under which we live, and despairing of their betterment. It is intended to be shown that a system has been adopted, and is being now carried out with rapid strides, by which, while perhaps "the theory of a free government remains unaltered," the entire character of our laws is being changed, the foundations of all our most valuable national institutions shaken, and the course of our prosperity and progress, necessarily, therefore, endangered, while the irresponsible power and influence of those in authority is being indefinitely increased. But it is hoped that this may be done, on the one hand, without any personal offensiveness, and, on the other, with every confidence that the disease has only to be thoroughly understood to be cured,—the means of cure being simple, obvious, and needing the application of no violent specifics. It is idle to deplore the signs of the times, and to wring the hands in lamentation, instead of putting the

shoulder to the wheel and relying on self-exertion for their bettering. It is indeed the worst sign of the times when such accents are often heard abroad, and when some new Political Panacea is being daily proposed as the sovereign cure for every ill. No honest man can ever really believe in the efficacy of such panacea. Every thinking man must feel satisfied that, in every age of human affairs, there will be a tendency to some abuse of authority, some violation of public and of private rights, and some invasion of those old and tried institutions on whose maintenance and permanence must depend prosperity and progress ; all which it needs careful, constant watching to repel. The evil to which attention is now about to be called is a serious one ;—but it is one which needs no revolution and no political quackery to remedy. Let public attention be once fixed upon it and the evil spirit is exorcised. Its peculiar danger, however, arises from this ; that, if not exorcised before it has attained a greater head, it is a mischief which fatally threatens that peculiar and most valuable element in our constitution by which *Progress* may go on continually without *revolution* ; by which advance may be ceaselessly made without doing any violence to existing institutions or existing rights and interests.

The encroachments upon the fundamental law, in a nation like England, will necessarily be in the direction of an attempt to substitute the will or notions of an individual, or of a few individuals, in place of the will of the community. This may be done, as already hinted, in a great diversity of ways, and from very different motives. There is no doubt whatever that it has often happened in English history that such

encroachments have been attempted purely and openly with the object of personal gain. This is, however, a mode of aggression generally the most transparent, and, therefore, it the more readily attracts attention and stimulates resistance. It is thus really less dangerous to the well-being and progress of society,—depending as these do on the permanence of the fundamental law,—than are aggressions made under any specious disguises which may really originate, or bear an appearance of originating, in other motives. The tendency and systematic direction of the encroachments now and for some years past making in this country, are far more really subversive of the fundamental law of the nation than is any openly aggressive course ever ventured to be adopted by any king or party which has ever held authority in the land. They are so because the motives of many of those most active in the work of encroachment are, undoubtedly, not personally selfish, nor animated by any hope or wish for private gain. The tendency of their proceedings is covered, therefore, from the more obvious and direct observation of mankind. A more careful observation, however, clearly shows that the system is more dangerous than one of open and undisguised hostility to the rights and liberties of the people.

Those most actively engaged in the encroachments thus alluded to, profess liberal views and politics ; but it is always with them a condition precedent that they are to manage entirely in their own way everything that is proposed for the benefit of the people. Their motives they protest are unimpeachable ; and they fall back ever on a certain *myth* of divers “ priceless

services" rendered, as they assure us, by their ancestors, to the people of this land. They rely on that *myth* to cover whatever deficiencies may exist in their own capacities. It is essential to the working out of their notions of liberal institutions, that the people should be bound hand and foot, except in the region of the breeches-pocket ; that every new liberal measure should be carried out entirely by their own creatures, nominated and appointed solely by themselves, and without any responsibility whatever to the public ; quite indifferent, indeed, to that public, except in so much as that their salaries may be regularly paid by it. Being Liberals, no constitutional checks are necessary to be observed by them, for they cannot err. The very mention of such checks is treated with indignation. The hereditary disposition of Englishmen to see after their own affairs, is treated as a foolish and ignorant prejudice, since it ought to be obvious that any one appointed by these liberal gentlemen, and who uses a large red seal, must know much better what is best for the spirit's health and the body's of every man in England than can those who only happen to know all the conditions and circumstances of the case which has to be dealt with,—matters for which the true members and supporters of this party always have a supreme contempt. They have a great horror of absolute power, unless they happen to be in office ; under which circumstances, however, heaven and earth are to be stirred to place that power, uncontrolled, in their hands, and any opposition is only factious and betokens an illiberal and narrow spirit. Finally, they have one sovereign specific for every grievance and for every ill that men and Englishmen

are heirs to,—namely, “three paid commissioners, being three Whig gentlemen of agreeable politics and easy disposition, and also very thick with the Whig aristocracy*.”

It has been well said that “the mysterious Whig triumviri, the solution of all difficulties, political, social and moral, meet us” on every page of the history of this party “as surely as the Fates or the Furies do the classical scholar. There is an ample work on the Trinity of the Gentiles: there is ample room for one on the Trinity of the Whigs, viz. three commissioners, each receiving, as may be, one or two or three thousand a year†.” They would, in fact, put the whole earth in commission, and deliver over the whole human race saved from the flood to “Inspectors” and “Assistant Commissioners.” “The *onus probandi* now lies upon any man who says he is not a commissioner. The only doubt on seeing a new man among the Whigs is, not whether he is a commissioner or not, but whether it is Tithes, Poor Laws, Boundaries of Boroughs, Church Leases, Charities, or any of the thousand human concerns which are now worked by Commissions, to the infinite comfort and satisfaction of mankind, who seem in these days to have found out the real secret of life—the one thing wanting to sublunary happiness—the great principle of COMMISSIONS.” Such Commissions must of course lack no powers. It is accordingly a universal rule that “they may call for every paper in the world and every human creature who possesses it; and do what they like to one or the other.” Everything is done to make them “vexatious,

* Times, 20th Nov. 1848.

† Times, 17th Nov. 1848.

omnipotent, and everlasting.” But all is done from the most tender regard for the public good. It is very ungrateful and very foolish that people will still wish to exert any of the faculties God has given them, and to manage any of their own affairs in their own way, when here are men ready and willing to do every thing for them,—and only asking to be paid handsomely for doing it,—who must of course know much better all about the people’s affairs than the people themselves can. “ You don’t make the most of your money : I will take your property into my hands, and see if I cannot squeeze a penny out of it.”—“ Just pull off your neckcloth, and lay your head under the guillotine, and I will promise not to do you any harm. Just get ready for confiscation ; give up the management of all your property ; make us the ostensible managers of everything ; let us be informed of the most minute value of all ; and depend upon it, we will never injure you to the extent of a single farthing.” “ Let me get my arms about you,” says the bear, “ I have not the smallest intention of squeezing you.” “ Trust your finger in my mouth,” says the mastiff, “ I will not fetch blood*.”

If we come carefully to examine the history of this party and the nature of their proceedings, we readily understand how it is that the course which always characterises their administration, and more markedly and fatally within the last twenty years than at any former time, has grown up. A consciousness, unacknowledged, no doubt, but still lurking, always present, of want of capacity for the task so eagerly undertaken ; together with an indisposition to put forth the

* See Sydney Smith’s Letters to Archdeacon Singleton.

exertion necessary to understand the history and constitution of the country which they would rule; are the two secrets which lie at the bottom of most Whig measures. The *Sentimental Philanthropy* to which allusion has been already made has thus a great tendency to manifestation in their persons.

We might go in detail through their principal measures, and both these causes would be found to be invariably present and invariably the operative ones. Illustrations of this will hereafter be given. They have read, in the little of history they have ever studied, how Procrustes acted on a certain occasion; and they have learned, from that example, that, if they cannot comprehend the constitution of their country, and find it troublesome to search into the foundations of its laws and history, or are conscious of a want of the capacity to adapt those laws and constitution to the circumstances of the age and the course of human progress, it is better to disregard such vulgar matters of human faith altogether and try to botch up a new bed of their own on which all men shall be stretched, whether they will or no, according to Act of Parliament.

They cannot comprehend the very important distinction between *progress*, and *change or experiment*. It is true that mere *change*, experiment, is far easier, gives much less trouble, requires far less talent, and is, moreover, more gratifying to individual vanity, than the careful study of existing principles, laws, and institutions, and the cautious adaptation of these to the ever-varying phases of surrounding circumstances. The latter, however, is the course which he will pursue who sees the true value of sustaining unshaken

the peace and good order of society, and who knows the foundation on which the maintenance thereof must always rest. The former is a course which may be adopted sometimes with good intentions, it is true, but can never be so with prudence and with wisdom. It is the course which offers, above all things, encouragement to the turbulent and discontented, who would traffic, for their own interested ends, in the grievances of any section of the public. Thus is it that, most unwittingly, no doubt, but not less surely, do those whose duty it is to maintain the public peace afford the most direct encouragement to those who desire nothing so much as a breach of it, and who would delight, above all things, in a revolutionary disorganization of the whole framework of society*.

The friends of this system cannot see that the highest aim of the true statesman is, not revolution, but *progress*; that his noblest epitaph will be that he

* Sydney Smith, dwelling on the extent to which these pretensions and violent changes had gone in his day (always, awkwardly, giving fresh patronage and power to the "liberal" Government), very justly says, "What a lesson of violence and change to the mass of mankind! Do you want to accustom Englishmen to lose all confidence in the permanence of their institutions—to inure them to acts of plunder—and to draw forth all the latent villanies of human nature? The Whig leaders are honest men, and cannot mean this; but these foolish and inconsistent measures are the horn-book and infantile lessons of revolution." The real mischief is to be traced to "the conceited rashness of experimental reasoners," who, in their presumptuous self-conceit, and utter ignorance of the real merits of that on which they so dogmatically pronounce, sneer at all "adhesion to old moral land-marks;" at all disposition to feel "attachment to the happiness we have gained from tried institutions," rather than to trust to "the expectation of that which is promised by novelty and change."

forwarded that progress by striving to *adapt* the institutions and traditions of the people to what new circumstances have arisen ; that the most dangerous thing in which he can indulge, and the most fatal to the welfare and permanent prosperity of the nation, is the disposition to novelty and new experiment. On the contrary, being unable to comprehend those institutions and the vital spirit of those traditions, they treat them with undisguised contempt. All they can understand in them is, that they give no place to Commissioners and Inspectors ; therefore they must be obsolete, and not adapted to the spirit of the age. They make, indeed, their readiness to try any new experiment their boast. They thus become the easy dupes of every vain promulgator of idle crotchets or interested disseminator of specious quackery ; and any one who can succeed in getting “ thick ” with any of “ the Whig aristocracy,” and is gifted with a proper contempt for English institutions and an utter disregard for the vulgar claims of fact and truth, may depend with pretty confident certainty upon setting on foot one of those new experiments of which the beginning is always a “ Commission of Inquiry,” and the end a “ General Board ” of paid Commissioners.

And this machinery is, it must be confessed, very effective for the purpose intended ; and, if the public would only be kind enough to submit to it, the authors of the system would remain in office till a sufficient number of “ General Boards ” were formed to direct every man at what time he might rise, at what time go to bed, when and what he might eat, and when and what he might drink, and when and how he might

discharge every office of life. By the Commission of Inquiry,—a due care being always had in its constitution to omit every one of those checks which the laws and inherited institutions of the country have provided for the eliciting of truth, the preventing of imposition, and the detection of fraud and untruth; and which checks the philosopher and the man of science equally proclaim to be essential to the possibility of ever getting at the truth,—by the Commission of Inquiry all the real bearings of the case, all the actual facts and conditions and requisites, are distorted or effectually smothered, and a vast blue book is produced, which it may be safely relied on that no one will read, but with the pretended results proclaimed in the first few pages of which the indolent many find it most convenient to content themselves. Thus, then, are the only sound data for forming a correct expression of the public will absolutely prevented; and that expression, if uttered at all, is vitiated and perverted. The grand end soon follows, and a “General Board” of paid Commissioners is formed to carry out the work of experimental mischief. In the formation of this latter body, as in that of the Commission of Inquiry, care is taken to avoid all those checks and guarantees which the fundamental laws and institutions of the country have provided for the protection of the rights, liberties, persons and properties of the people; and that the nomination shall be entirely under the control and patronage of Government itself. Its members are thus entirely irresponsible to that public who has only to pay their salaries and submit to their dictation. Thus is the land covered with Commissioners of everything under the four winds of heaven, and

Inspectors of every probable and possible "misery of human life;" Commissioners and Inspectors, whose business it is to put forth from time to time as flaming and lengthy *ex parte* statements—called "Reports"—as they can, in order to make the world believe what a vast deal of work they are doing for their money.

This is no overdrawn picture, as will be shown in the following pages. But the advantages, for the carrying out of Whig notions of regeneration, of this uniform system are not confined to the direct encouragement given to every schemer and charlatan who may be pleased to find fault with the institutions of his country, and to whom the disorganization of society itself offers greater hopes than the permanence and continual but unviolent progress of a political and social system which has been the steady growth of upwards of a thousand years. It must, no doubt, be matter of deep and painful concern to a "liberal" government that, by this conscientious discharge of their deep-felt duty to their country, an amount of patronage falls into their unwilling hands greater than was ever enjoyed by any English government before, and which places them under the painful necessity—only endured from the conviction that it is for the public good, if the public would but see it—of planting all the offshoots of the several Whig families in the breeches-pockets of the people. They sustain the infliction, however, with a Roman sternness of patriotism which cannot be sufficiently admired. They are consoled, moreover, under this heavy trial of their patriotism, by the reflection that, the more extensive this patronage becomes, the more widely-spread are thus their own creatures and de-

pendents, and the more widely extended becomes a class whose personal interests depend on the maintenance of the system, the more secure becomes their own hold upon office, and so is the opportunity enlarged of manufacturing new commissions for the benefit of the public. They reflect, with pleasure, on the fact that they are thus enabled, daily, to provide fresh leading-strings for the nation, to keep it out of harm's way and to prevent it from running into that especial danger, to which Englishmen are naturally prone, of thinking of, or being able to look after, their own concerns. Such, they know, has been the system which has been adopted on the continent, and by which the people of continental nations have so long been kept in such a wholesome state of pupillage. That system is the special admiration of the Whig party. To establish it fully in England appears to be the one object of their patriotic ambition, and towards it every effort is, even at such painful sacrifices, being steadily and systematically made.

There are some, however, who are obstinate and blind enough to think that the present as well as permanent well-being of the community is endangered by this system of Commissions,—which forms the one grand characteristic of Whig administration, the mark by which it will be known in history. The object of these pages is, it must be confessed, to broach such a heresy; to call attention to the facts themselves, and to the vast extent and nature of the mischief; that so the public voice may demand an abandonment of the entire system, and require a respect for those institutions and fundamental laws, in the constant observance of which, by those who happen

to have authority entrusted to their hands, consists, there is the temerity to assert, the only security of individuals for property or person ; the only security of the nation that it will derive from its political establishment those advantages the prospect of which it is that renders political establishments desirable ; the only hope that the nation and the human race will march onward steadily in that course of progress which is the noble destiny of man.

There is no doubt that, with many people, the professions of liberality, economy, &c. which are made by the upholders of the Commission system, serve to blind them to the real danger of the course which is being systematically pursued. Not deeply considering the matter, which few unfortunately take the trouble to do, and heartily earnest themselves in the cause of human progress, they are led away by empty professions and pretensions, and shut their eyes to glaring facts. Never having considered in what consists the fundamental idea of our national existence, they do not stop to consider whether or not violence is in reality being done to that fundamental idea, or whether or not any public good can result from a course which sets at defiance all the fundamental laws and institutions of the country. But assuredly the greatest enemies to human progress are those who, with loud pretensions of liberality continually on their lips, are in reality but mere nostrum-mongers, and always with the same recipe ; a recipe which, while it secures their own irresponsible influence and power, saps the foundations of that greater power from which alone their own is sprung, and to which it rightfully owes fealty.

As to the nature of the Commissions which are thus specially identified with Whig government, their name is so truly Legion that it would be impossible in a few words to describe them. Putting aside, as unwillingly accepted incidents, those never-failing results of patronage and place and systematic jobbing which are the necessary accompaniments of all these Commissions, it will be found that a Commission,—always picked and packed for the purpose *ex parte*,—is had recourse to whenever anything is wanted to be done which ought not to be done at all ; whenever any crotchet or new experiment is sought to be enforced on the land by which that shall be done in an irregular and jobbing way which there are recognized and legal means of doing in a regular and open way ; whenever a false expression of public opinion is desired to be vamped up on any matter ; whenever it is desired effectually to *shelve* any important question to which attention has been called ; whenever it is desired to conceal any flagrant job or blunder ; whenever it is desired to shift off responsibility from those to whom it properly belongs ; whenever there are any needy men, hangers-on of the Whig party, who happen to be out of a situation, and who are in want of a comfortable *plant* in the breeches-pocket of the people.

How various and how numerous are the excuses which can be had recourse to, to get up a Commission, will in part—and in part only—appear from the following mere *heads of references* to Commissioners' "Reports" in the index to the parliamentary papers printed between 1832 and 1844, that is, for *twelve years* only. It is said "will in part appear," for this list, should

the reader's breath sustain him while he goes through it, but imperfectly represents the real number or pretexts of the Whig Commissions. As we proceed there will be occasion to mention others not here noticed. But it would be no easy matter to get a complete list of all the Commissions for the existence of which we have to thank the literally "priceless services" of the Whig party. The following list will, however, enable any one to see how few concerns there are which the kind attention of these most benevolent gentlemen has left it at all necessary for Englishmen to trouble themselves about, all being most handsomely undertaken to be done for them by Whig Commissioners "receiving, as may be, one, two or three thousand a year."

Accounts, Public, Ireland.

Agriculture.

Army.

Auctions.

Australia, South.

Bankruptcy, England.

Bastards.

Belgium.

Births, Deaths and Marriages.

Bolton Corporation.

Boundaries of Boroughs.

Brewers.

Caledonian Canal.

Candia.

Charities, England and Wales.

Children's Employment.

Church, England.

Church, Ireland.
Church, Scotland.
Civil List.
Colonies.
Constables.
Copyhold Estates.
Corporations, England and Wales.
Corporations, Ireland.
Corporations, Scotland.
County Rates.
Courts of Law, England.
Courts of Law, Ireland.
Courts of Law, East Indies.
Criminal Law.
Crown Lands.
Customs.
Danish Claims.
Dean Forest.
Debt and Debtors.
Distress of the Working Classes.
Drainage, Ireland.
Dudley Union.
Ecclesiastical Courts.
Ecclesiastical Revenues.
Education, Great Britain.
Education, Ireland.
Egypt.
Emigration.
Exchequer Bills.
Excise.
Factories.
Fees, Public Offices.
Fine Arts.

Fines and Recoveries.
Fish and Fisheries.
Fish and Fisheries, Ireland.
Foundling Hospital, Dublin.
France.
Glass.
Grand Juries and Grand Jury Presentments,
Ireland.
Hand-Loom Weavers.
Harbours of Refuge.
Health of Towns.
Herring Fishery.
Highland Churches.
Highland Roads and Bridges.
Holyhead Harbour.
Holyhead Roads.
Hops.
Houses of Industry, Ireland.
Illegitimate Children.
Indian Law.
Jury Court, Scotland.
Justice of the Peace Courts, Scotland.
Juvenile Offenders.
Kilkenny Canal.
Lancaster, County Palatine.
Land Revenue.
Law Commission, Scotland.
Licences, England.
Lighthouses.
Loan Societies, Ireland.
Local Courts.
Local Taxation.
London and Dublin Communication.

Lunatics and Lunatic Asylums.
Malt.
Malta.
Marshal's, Earl, Office.
Medical Charities, Ireland.
Menai Bridge.
Metropolis Improvements.
Metropolis Turnpike Roads.
Midland Mining Commission.
Milbank Penitentiary.
Mines and Collieries.
Mumbles Breakwater.
Navy.
Negro Education.
Netherlands.
New Churches.
Newgate Gaol.
Northleach House of Correction.
Offices.
Ordnance Memoir, Ireland.
Parliament, Houses of.
Parliament Representation.
Partnership.
Passage Vessels, and Passengers.
Penitentiaries, United States.
Pentonville Prison.
Pilots and Pilotage.
Poor, England and Wales.
Poor, Ireland.
Poor, Scotland.
Population.
Port Dynllaen Harbour.
Post Office.

Preston, East, Gilbert's Incorporation.
Printing.
Prisons, England.
Prisons, Ireland.
Prisons, Scotland.
Prisons, West Indies.
Prussia.
Public Instruction, Ireland.
Queen's Printer.
Quit and Crown Rents, Ireland.
Railways.
Rates and Rating.
Real Property.
Records, Public.
Redcar Harbour.
Religious Instruction, Scotland.
Reproductive Loan Fund, Ireland.
Revenue.
School of Design.
Shannon Navigation.
Shrewsbury and Holyhead Roads.
Soap.
Spain.
Spirits.
Spitalfields.
Statute Law.
Steam-Vessels.
Stone Bottles.
Sudbury Borough.
Survey and Valuation, Ireland.
Syria.
Tanjore Debts.
Tea.

Thames Embankment.

Tithes, England.

Tobacco and Tobacco trade.

Turnpike Roads, England.

Tuscany.

Universities, Scotland.

Vaccination.

Vinegar.

Weights and Measures.

Wine.

Woods and Forests.

Workhouses, Ireland.

Works, Public, Ireland.

It will be at least admitted that here is no lack of topics interesting to the public, and the simple-minded reader will naturally ask what is left for government itself to do, or to be responsible for doing, if all these matters are thus handed over to irresponsible Commissions. It will also occur to ask what is left for the public to form any opinion about, if it is thus so considerably and kindly dictated to them what they shall think on each of the infinite variety of matters here enumerated. Some may be ill-natured enough to ask who pays for all these Commissions, and for all this printing of their Reports; but let that pass. It must be seen at a glance that many of these topics are topics of great importance, and topics upon which it is desirable that the public should possess the full means of forming a sound opinion. But he must be infatuated indeed who can think that the means of forming a sound and healthy opinion can be in the least degree afforded by any number of statements

“ by authority,” however great, all *ex parte*, as are necessarily all the Reports of Commissions appointed by government and worked as all such Commissions are.

That the subject may be more clearly understood, it is proposed in the following pages to consider these Commissions under two heads :—1st, COMMISSIONS OF INQUIRY ; 2nd, ADMINISTRATIVE COMMISSIONS. Each class is equally illegal and pernicious ; each equally violates the fundamental idea of the national union and the fundamental laws and institutions of the land. But there are special considerations deserving attention in the cases separately, which render it desirable to treat of them apart. This will accordingly be done in subsequent chapters.

In order fully to understand how, and in what degree, these Commissions are illegal and pernicious, it is clearly necessary first to consider, separately, what are some of the principal of those fundamental laws and institutions which they violate. And for the true and clear understanding of the merits of the case, it is desirable that this point also should be considered under two different aspects : *first*, in respect of the fundamental laws and institutions of the country relating to the maintenance of the body politic itself ; *second*, in respect of the fundamental laws and institutions of the country relating to the rights of person and property of individuals, as individuals. It is obvious that these two divisions include that which is most essential to the existence and well-being of any state. Happily both have, for many centuries, been settled on a sound basis in this country.

And when the actual nature and importance of

these fundamental laws and institutions have been shown, and how the system of Commissions is in open and flagrant violation of them all, another, but not the least important, task remains. It has been already said that no circumstances can justify the giving up of that continual struggle which is, very wisely, made necessary, by man's very constitution, to the maintenance, and the appreciation of the full value, of the rights and duties of self-dependence and self-exertion which have shaped into a law the fundamental idea of the English national union. No circumstances can justify either giving up the struggle or desponding for the result. It is true that, while accident has placed authority in the hands of those who now style themselves *liberals*, the odds are greatly against those who would maintain the struggle for the supremacy of the fundamental law over the systematic usurpations and violations of it which that name has served to cover. But the results of all such usurpations and violations must, sooner or later, become apparent. In the hope, then, that the earlier chapters of this work may tend to bring about that result, it will be well briefly to consider, not only the fact of these usurpations and of these systematic violations of the laws and institutions of the country, but the mode in which those laws and institutions may best be restored to their wholesome vitality ; the mode in which, without this clumsy and illegal and pernicious device of commissions, the affairs of the country may be carried on ; and, more especially, the mode in which those laws and institutions may be made best subservient to forwarding the great end of human progress. Some space will, therefore, be devoted to the consideration of that essential

characteristic of our institutions, the principle of *local self-government* ; with which the system of commissions is, of all others, the most directly in antagonism, and which it is the ceaseless—and by many the avowed, by all ill-disguised—aim of their upholders altogether to subvert, substituting in its place that Procrustean system of centralization of which commissions are but the machinery. Some further space will be devoted to showing how the cause of national Progress may be subserved by the adoption of a regular, legal, and wholesome method of truth-seeking on matters of public interest, in place of that irregular, illegal and pernicious method now in use, by which falsehood is made to usurp the place of truth and the latter only to sink the deeper in that well where it lies hidden.

The current of Human Progress is one which cannot be pent back for long by any human power or party. Its onward course is certain, inevitable. It is the great glory of the British Constitution that it is based on such true and deep *principles*—not finalities and specialties,—that, without revolution and without violence, it is capable of adaptation to the varying circumstances which change of time brings on ; that it is, therefore, peculiarly favourable to the full development of that great work of Human Progress. For a time this, its inevitable tendency, may be checked by the ignorance or selfishness or mistaken aims of individuals who hold places of power : for a time it may be threatened by *Commissions*, which are as much in antagonism with it as they are with the discovery and development of truth. But the spirit which gave birth to the fundamental

law of England still lives. As it has never yet been crushed by any usurpation, or by any tyranny or oppression, so it may be confidently hoped that it never will be. The spirit which can make an Englishman quietly but steadfastly declare to his oppressor,—after suffering years of persecution and of injury, after mutilation, confiscation, and imprisonment,—that “through God’s mercy, maugre all men’s tyranny, he still continues to be, what he was ever found, his long-oppressed, yet *still unconquered*, Tyranno-Mastix *,” is the spirit which has made the attempted usurpations of our Edwards and our Henries and our Charleses unsuccessful for the ultimate establishment of arbitrary power and for the annihilation of the fundamental idea on which our constitution rests. And the same spirit which has struggled successfully against the Edwards and the Henries and the Charleses will struggle successfully against the still more dangerous and no less determined usurpations of the modern system of COMMISSIONS. If we would avoid in this country the danger of such scenes as have lately disfigured neighbouring lands,—scenes which have happened there from the existence of that system of centralization and universal government patronage towards which such rapid strides are now making here,—we must boldly look the danger in the face, and deal with it before it gets to greater head. Those foundations on which we have hitherto rested secure from such convulsions are the very foundations which are being insidiously but systematically sapped by that course against which we are thus called on, in self-defence, to struggle. To carry on this struggle

* Prynn’s Letter to Bradshaw, Nov. 24, 1654.

and remove the danger needs but moral courage and honesty of purpose, which will submit neither to be browbeaten nor cajoled. It is by the quiet and peaceable, but unflinching and determined, insisting on an unswerving respect being continually had by those in authority for those fundamental laws and institutions which we have inherited from our fathers, that we shall best, but with necessary success, struggle against these usurpations and inevitably overthrow them; and so do our part towards advancing the great ends to which those laws and institutions are so specially adapted—the highest moral, as well as physical, well-being of ourselves and our fellow-citizens, and the continual Progress of our nation and our race.

CHAPTER II.

FUNDAMENTAL LAWS AND INSTITUTIONS OF ENGLAND
RELATING TO THE MAINTENANCE OF THE BODY
POLITIC.

“By which, the Statutes before mentioned, and other the good laws and statutes of this realm, your subjects have INHERITED this freedom.”—Petition of Right.

“And they do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties.”—Bill of Rights.

“The Laws of England are the BIRTHRIGHT of the people thereof.”
—Act of Settlement.

ALLUSION has been already made to the necessary existence, in every civilized state, of some Fundamental Law, whose sanction is founded on the prevalence throughout the nation of some leading Idea as to the relations of the individuals and classes of the community to each other. Such a fundamental law exists as much in despotic countries as in any others. On its existence, indeed, depends the permanence of that very despotic form of government which might, at first sight, be thought in contradiction to such an independent sanction. But, beyond this, it has happened in all despotic countries that, in course of time, certain institutions have grown up and come to form a part of the national system, which the monarch himself cannot venture openly to violate, without, at any rate, endangering the integrity of that very idea on which his autocracy depends. If this is the

case in absolute monarchies, still more is it so in countries where the fundamental law on whose prevalence depends the national existence is the Supremacy of the will of the nation itself. In such countries the distinctness and permanence of certain laws and institutions, which those entrusted with authority shall be required always to respect and observe, is obviously of even higher importance than in despotic countries. Such laws and institutions, though one degree less primary than the fundamental law already noticed, being, yet, essential to the very maintenance and soundness of the national union, and being immediately derived from that primary fundamental law according to the genius of the national mind, must properly be termed, in a collective sense, "Fundamental Laws and Institutions."

This matter does not usually meet with sufficient consideration. It seems, indeed, not to enter at all into the consideration of many who believe themselves to be really "*liberals*" and "*reformers*," and who sincerely and earnestly do desire the bettering of the condition of their fellow-men;—but who, led away into the far easier but more dangerous path of new experiment, instead of devoting themselves to the adaptation of existing institutions to the changed circumstances of the times, do indeed prove themselves the greatest enemies to that *Progress* which cannot always be *beginning anew*, but which, to be real, must be *going on* upon secure and well-established foundations. It is not sufficiently thought of, indeed generally not thought of at all, that even the commonest rights of property are dependent in every country upon established and positive law; that the

fact and nature of the possession and control enjoyed by every one over that which he calls his *own* is entirely dependent on, and subject to, the special and positive law of the land in which he lives ; as is also the extent to which, and the mode in which, he has the power to order the disposition after his death of that which, during life, has been his. Not only is this so, but it is necessary that it should be so if there is to be any right beside that of the strongest, and, so, any national union and national progress. It is clearly necessary to the development of the resources of art, science and agriculture, on which the very existence, not to say progress, of society must always depend, that laws and institutions shall exist in whose permanence there shall be a felt confidence. Every shaking of that confidence, every doubt originated as to that permanence, is therefore a blow against human progress. Every man who in his arrogance and self-complacency, however benevolent his motives of action, sneers at, or would recklessly violate or supersede, the ancient fundamental laws and institutions of his country, is, in truth, attacking the elements of social and national existence, is doing his best towards causing his race to retrograde instead of to advance.

As, without entering more fully into this matter than is here possible, there is much liability to misrepresentation, it is well to say, once for all, that what is thus insisted on is the permanence of those laws and institutions which, in relation to mere matters of everyday regulation—often called Laws, stand as PRINCIPLES, of which the last-named are but—but ought always to be strictly—illustrations and applications. So is it in every science, besides that of human society.

The physiologist or astronomer who deserves the title of philosopher must needs be guided by certain Principles which he acknowledges as the basis of his method of inquiry ; and reliance on which, and their constant observance, can give him his only hope of ever reaching truth. There can be no FINALITY in the discoveries of the physiologist ; there can be no fixed limit to the illustrations which careful study will enable him to bring up. And so there can be no finality in the course of human progress, and no fixed limit to those regulations and arrangements which are commonly (though very improperly) called Laws. As physical science is too often buried under names and systems which are really but as a husk to enshrine a goodly kernel, so, in human so-called laws, the husk is often retained when the kernel—the special circumstances calling for the special regulations—is gone. But this in no degree lessens, rather it vastly increases, the importance of constant attention to Principles, and distinguishing them from mere illustrations or temporarily convenient forms. The two must be distinguished as *accidents* are from *essentials*. It is the want of this distinguishing which makes the difference between the headlong advocate of every change or the bigoted stickler by everything that is established—both of whom belong to one category—and the enlightened friend of human progress. The latter sees that it is only the charlatan and quack who, careless of all principles, proclaim their new systems, and decry all others, with presumptuous arrogance and unhesitating confidence.

It has fortunately happened in our country that the instinctive, if not the reasoned, force of these truths

as to the importance of certain fixed principles in the laws of human society, as in every other matter, has always, until lately, been so strongly felt, that, whatever changes may have taken place in accidents, it has been held indispensable that the ancient and fundamental laws and institutions of the land should be sacredly protected. As William the Conqueror could not, in spite of the victory at Hastings, obtain the crown till he had sworn that "all should have and keep the laws of King Edward in all things"—and it was wherein he violated that oath that the people suffered;—so, when a victory of a different kind had been obtained, and all kingly authority had been overthrown, the parliament, six hundred years afterwards, felt that no confidence would be placed in them, and that therefore their regulations would carry no authority, until they had solemnly protested and declared that "they were fully resolved to maintain, uphold, preserve and keep the Fundamental Laws of this nation;" which "good old laws and customs of England, THE BADGES OF OUR FREEDOM, the benefit whereof our ancestors enjoyed long before the Conquest, and spent much of their blood to have confirmed by the great Charters of their Liberties, *have continued in all former changes**;" and it was when these declarations were violated that it was felt that the pretence of liberalism and of ardour for the people's rights might at any time be but a "guilted dissimulation and specious pretence to get power into their own hands, thereby to enable them to destroy and subvert both laws, liberties, and properties at last, and to introduce new forms of arbitrary govern-

* Declarations of 9th Feb. 1648, and 17th March 1648.

ment*.” English history is full of such illustrations. It is also full of attempts to violate those fundamental laws and institutions ; attempts which have at one time and another been more or less successful, but for which the day of retribution has never failed to come ; by which violator and oppressed, deceiver and deceived, have, happily for human progress, been made to feel, though with very different sentiments, that, in the expressive language of Lord Coke, “ *Magna Charta is such a fellow that he will have no sovereign.*”

There are, unhappily, many at the present day who sneer at *Magna Charta* as obsolete and antiquated, and deny that there is anything definite and positive which can be called the British Constitution ; while there are many who are in the habit of calling any proposition constitutional or unconstitutional which happens or not to fall in with their own crude notions and ill-digested schemes. Nothing can be more adverse to the cause of human progress, or so encouraging to those whose only hopes lie in the disorganization of society. To him who will take the careful trouble to inquire at the only fountain-heads, nothing can be clearer than that the fundamental laws and institutions of this country, which make up its *Constitution*, are peculiarly explicit and unmistakeable. It is, no doubt, very convenient for those who are anxious to obtain power and to impose their own crotchets on the land as law by means of Commissions and Central Boards, to sneer at and deny the existence of ancient and fundamental laws. Men are, however, and always must be, more governed by *Ideas* than by

* Prynne’s “Legal Vindication of the Liberties of England against Illegal Taxes and Pretended Acts of Parliament,” 1649, p. 22.

matters of actually enforced regulation. Ideas of this class having, from time to time, had utterance given to them, have, through a long course of ages in this country, manifested one unalterable spirit. That spirit yet lives, as also do,—and, in a state free through the natural genius of its people, always must,—those circumstances to which these Ideas relate. They are the spirit and the circumstances under which alone human progress can steadily go on. Hence the Laws and institutions which are the result of those ideas, at the same time that they enshrine and preserve them, are equally vital and important at this day as they have been in any former age; and they bear upon them this impress of the eternal truth which forms their basis, and makes them rank as Principles, that they are adaptable to every phase of human progress, and form indeed the surest guarantee of that continual progress. Modern legislation of the Commission school does not comprehend any influence of *Ideas* over man. It is essentially materialistic, utilitarian. It appeals only to the gross and more selfish portion of man's nature, knowing nothing of that spirit of Faith in man, or of that empire of *Ideas* over man, which sound legislation will always principally regard, and which stand out so conspicuously the characteristics of the ancient and fundamental laws and institutions of the country.

The earnest friend of truth and human progress cannot fail, then, to perceive the importance of a more careful attention being given than is usually done by modern law-makers to the language, literature, and laws of our fathers. It saves, undoubtedly, much time and trouble ignorantly to pronounce a copious and

refined language barbarous, and a noble system of political union rude. Both will, however, amply repay the most careful investigation. Something of that investigation is absolutely necessary if we would not that the noble heritage which has come down to us from our fathers should lie an easy prey to the attack of any ignorant pretender who may "walk abroad into peaceable society in full day-light, with rattle and lantern, and insist on guiding you and guarding you therewith, though the sun is shining and the street populous with mere justice-loving men*."

How we may learn and know what are truly the fundamental laws and institutions of our country is the next matter for consideration.

Acts done under circumstances of peculiar solemnity and general attentiveness must always be of more weight than acts done in the ordinary course of every-day business. Solemn covenants entered into at national conventions will, of necessity, refer rather to matters of principle than matters of detail, to essentials rather than to accidentals. It may also be remarked, that principles thus solemnly sanctioned must be binding,—that is, by the highest moral sanction, the only possible sanction in such a case,—on those assemblies which owe their very present peaceable existence, as does society its actual form, to the occasion and fact of those solemn covenants. Any change in such principles can only be made under circumstances of like solemnity and sanction as those under which they were first declared. And if, at time after time of like solemnity and sanction, the same principles have been redeclared and reiterated, the

* Sartor Resartus, B. I. ch. 10.

moral sanction which they carry becomes, each time, the stronger, and their character as Fundamental Laws and Institutions becomes the more determinately fixed, and the more important, to be insisted on. Of such a nature was the solemn sanction given in the reign of William the Conqueror to the then ancient laws and institutions of the country. Of such a nature was Magna Charta ; a solemn league and covenant by and between, and with the express and recorded assent of, all orders of the state, and but for which society in England would have been wholly disorganized. And like solemn was the occasion, and like fundamental the covenants entered into, when, five hundred years later, with the same authority and assent, the people of England “vindicated and asserted their *ancient rights and liberties*, as their ancestors *in like case had usually done**.” It is perfectly clear that the broad principles solemnly laid down on either of these or any such occasions, constitute fundamental laws which it is a betrayal of its trust for any government to attempt to supersede ; and, however often the attempt to evade such fundamental laws or to destroy such fundamental institutions may be made, the history of centuries assures us that the end will only be the necessity of again solemnly declaring, “as our ancestors in like case have usually done,” what our ancient laws and institutions, those “*Badges of our Freedom*,” are, and insisting upon them as our “birthright.”

Besides this seemingly obvious line of argument, the doctrine, here maintained, of the necessary and actual existence in this country of certain fundamental

* Bill of Rights,

laws and institutions may be supported by a long array of authorities. A few instances of these will be sufficient as illustrations here. Others will incidentally be quoted as we proceed. But the records which will be cited will, apart from any such sanction of mere authority, carry to the mind of every honest man the best conviction of the character which belongs to them.

Lord Coke, speaking of an act of Parliament by which the rights and liberties of the people were invaded as they are being now daily done, expressly condemns that act of Parliament as made “*against this ancient and fundamental law (Magna Charta)*, and in the face thereof* ;” and again alludes to it as “shaking this fundamental law ;” and takes occasion further to “admonish Parliaments” against all such proceedings. Other no less decided expressions of opinion will hereafter be cited from the works of the same learned writer. Another able lawyer, of the same period, is content to rely, against encroachments grievously endangering the liberties of the people, upon Magna Charta ; which he relies on as “being not only a statute but also a declaration of the common law,—which is right reason, which is above acts, and the law and rule to make acts by ;” and he justly speaks of those who would infringe it as going about to “pluck up the fundamental common law of England by the very roots†.” Hallam expressly and rightly says that “the Great Charter was always

* 2 Inst. 51.

† The case of A. B. truly stated, &c.; being an Appendix to A Plea for Sir John Maynard, one of the eleven impeached Members. 1648, p. 15.

considered as a fundamental law*.” Even Lord Brougham himself, forgetful for the moment of the share he had borne in concocting divers Commissions, speaks of those who infringe the Great Charter as acting “avowedly and openly an illegal part, and plainly violating a known, established, and fundamental law of the land †.”

And the importance of these fundamental laws and institutions being actually held to be such was, rightly, so strongly felt by our fathers, that on certain occasions they went the length of expressly declaring that any violations of them, even though professing to have the sanction of an act of parliament, would be illegal and void ‡. A curious illustration of this occurs in

* Middle Ages, vol. ii. p. 111.

† Political Philosophy, vol. iii. p. 229.

‡ “There is not a more dangerous doctrine can be adopted, in our state, than to admit that the legislative authority hath any right to alter the first principles of our constitution by acts of parliament.” “Our legislative authority is, by its own nature, confined to act within the line of the constitution and not break through it; because the house of commons is only vested with a trust by the people, to the end they may protect and defend them in their rights and privileges. And therefore it is a contradiction in terms to say they have a right to consent to a law that may restrain or destroy them. I think it is as plain as any proposition in Euclid, that the house of commons could not consent to such a law, without a notorious violation of the trust reposed in them.”—*An Historical Essay on the English Constitution*, 1771, pp. 141, 146. As above remarked, the only sanction which can be humanly superior to the ordinary legislature is the highest moral sanction. That sanction may be set at defiance, and, so, the fundamental laws and institutions of the country violated: but that violation, if accomplished, will only be by the right of the strongest, and in contempt of rights and liberties which have been secured by the only human guarantees. Such violation however, it may be confidently maintained, can never take

a statute the occasion of which may rank with those in which Magna Charta and the Bill of Rights originated, it being a consequence of, and having a direct reference to, a great national convulsion. By 11 Hen. VII. c. 1. it is enacted that no man who gives true allegiance to the sovereign *de facto* shall at any future time “be convict or attaind of high treason, nor of other offences for that cause, by *act of parliament* or otherwise;” and if any act shall be made contrary thereto, it shall “stand and be utterly void.” It is, perhaps, a more direct illustration, and is a most interesting evidence of the holy care with which our fathers guarded their liberties, that, by the solemn and awful sentence of excommunication which the bishops and archbishops were required to pronounce with all the most impressive circumstances of their faith, twice in every year, against the violators of *Magna Charta*, and by which they imprecated the everlasting wrath of heaven against all such violators, they did expressly “excommunicate, accurse, and from the fellowship of holy mother church cut off all those that hereafter by any craft or wiliness do violate, break, diminish or change the ancient liberties and free customs of the church or the realm approved and contained in the charter of the common liberties of the realm, &c.; or that secretly or openly, by deed, word, or council, do contravene them or any of them in any article whatever; and all those that make statutes or observe them being made,—or that bring in customs or keep them when they be brought in,—against the said liberties or any

place when the people and the legislature have clear ideas of the fact and nature of Fundamental Laws and Institutions. It is this conviction that has induced the publication of this work.

of them ; and the writers thereof, and the counsellors and executioners of them, and all those that shall presume to judge according to them."

These few illustrations will suffice to show that, if any can need it, there is no lack of authority for the proposition that there exist in this country, and the birthright of the people thereof, certain fundamental laws and institutions superior to acts of parliament, and which are "such fellows that they will have no sovereign." The reason of the thing, and its necessity to the stability and well-ordering of any state, and to the existence of that confidence on which alone prosperity and progress must depend, will, however, with the thoughtful reader, have much more influence than any mere weight of authority.

It must next be shown, in as brief a manner as it may be done with any clearness, what are some among the more important of those fundamental laws and institutions which relate to the maintenance of the Body Politic ; in other words, which relate to the rights and duties of individuals as parts of the state, and of the state, as a whole, to its several parts ; reserving till the next chapter those which relate to the rights and duties of individuals as individuals.

It is not intended to enter in any detail into the early origin of our laws and mode of government*. Deeply interesting and important as that inquiry is,

* The publication, since the first MS. of these pages was prepared, of Mr. Kemble's 'Saxons in England,' relieves me from the necessity of discussing several points on which I had originally entered. That work forms a valuable contribution to the general knowledge of a subject which ought long ago to have attracted more general interest.

as proving the unalterable attachment of our fathers, from the earliest times, to free institutions, it would occupy much space to discuss it with any profit. Neither is it intended to enter on the question, often discussed and sometimes not without acrimony, however little doubt there can exist upon it, of the election of the kings of England. It is quite sufficient that the throne of this country is at present occupied by election and by election only ; no sovereign of this nation since 1688 being able to pretend to any other title whatever to the throne than that by the election of the nation ;—an election which, for the prevention of those mischiefs and ambitions which might probably attend a periodically recurring popular choice of chief magistrate, and at the same time for securing the existence of that highly salutary *idea* which attaches to the office, fell upon a family, under certain restrictions*, instead of upon an individual.

Without discussing such details, it is certain that the one grand principle which has for more than a thousand years been maintained and insisted on in England, through all the parts and arrangements of the

* It is a curious fact that in the reign of Elizabeth should have been passed a statute (13 Eliz. c. 1) by which it was declared to be *high treason* even to affirm “ *that the laws and statutes do not bind the right of the Crown, and the descent, limitation, inheritance, or governance thereof.*” The reign of Elizabeth is usually represented as particularly the period when such doctrines were checked in high places and contradicted by sycophantic judicial dicta. Yet thus strong was in reality their assertion in that reign. Similar assertions had often been practically made before, as in the reign of Henry IV., &c.; but never, perhaps, in such strong terms. No long period, however, has ever passed in English history without the elective right and entire control of the nation over the crown being asserted and carried into effect.

Body Politic, in all its fundamental institutions and enforced by its fundamental laws, is the supremacy of the national will, and the RESPONSIBILITY to that Will of all those to whom authority has been at any time entrusted. The history of a Sigebert, an Ethelred, a John, an Edward, a Richard, a Charles or a James,—to make no further allusions,—is sufficient to show that, practically as well as theoretically, the individual entrusted with the office of chief magistrate was, from the earliest times of our history up to and at the time of the passing of the Bill of Rights, held personally responsible for the discharge of the duties of that office. It having been, since that last event, conceived that the permanence of the national union and the well-being of society would be better secured by the sovereign being the representative of the *idea* of a chief magistrate rather than as himself an active agent, that responsibility which the fundamental laws and institutions of the land required should attach to those to whom authority is entrusted has been thenceforth usually considered as attaching to his recognized advisers, the ministers of the crown. This is one among the many illustrations which might be given of the preservation of the idea developed in our ancient laws and institutions and its *adaptation* to the changed circumstances of the times. That which a king formerly did is now done by his ministers. To the latter therefore very properly attaches all the responsibility. The sovereign remains the symbol of Political Unity and of the supremacy and majesty of the Law.

It has been said, and it cannot be too often repeated, that the whole of the political system of our

fathers, while necessarily entrusting authority in the hands of individuals, has been directed to securing the RESPONSIBILITY to the nation of those to whom authority has been so entrusted. That responsibility has however been secured in very various ways. That the acceptance by the people of the laws, or their assent to them, either direct or through their representatives, has always been essential to their validity, however much trick or corruption may have been sometimes had recourse to in order to evade the consequences, is unquestionable. Other means than this were, however, taken to secure that *Responsibility*. The most remarkable, and, necessarily, the most effective of these were the institutions of *local self-government* everywhere established. Into the details of these it is impossible at length to enter. It is sufficiently well known that the *gemotes*—moots—or meetings of all the freemen formed an essential and distinguishing feature of the whole political system. At such gemotes, periodically held, every freeholder, and it would appear sometimes even villains, had a right to be present. And it must be remembered that, until a comparatively recent period, the being or not a freeholder was, out of towns,—it may be said to be, practically, still so,—the test of being a free or unfree man, of having or not an actual independent interest and stake in the country; and the freeholders were formerly vastly more numerous, in proportion to the population, than is now the case*. In their various

* A better evidence and illustration of this fact could not be given than the very remarkable statute 7 Henry VI. c. 7 (A.D. 1429), in which it is recited, that “Whereas the elections of knights of shires to come to the parliaments of our lord the king in many counties of

gemotes the whole body of the freemen discussed and controlled that which was for the benefit or otherwise of each place, heard and determined causes, and regulated the apportionment of the taxes. As towns grew up, and other sources of wealth and of a personal stake and interest in the state became thereby known and acknowledged, other tests of the freeman became established besides that of being freeholders of land; and those whose worth was tested by their being admitted to certain guilds were held equally free, and entitled to have an equal voice in the gemotes. As these gemotes had the exclusive management of all that related to their own local affairs, the various *reeves*, or heads of each district, whether or not actually elected, as was however usually the case, by the people, when they met in the witena-gemote or great council of the nation, went there well-informed as to what was needed for the general good, and what would be acceptable and accepted, or otherwise. And as the collection of the taxes was under the control of the local gemotes, and the influence of the reeve must have depended on his popularity, it would matter little, generally, whether the king had been allowed in any instances to name the reeve, or whether, as of old, he was actually elected. It is to this system of local self-

the realm of England have now of late been made by *very great, outrageous and excessive* numbers of people, dwelling within the same counties"; and it was because of the "riots" which were "very likely to rise and be" on that account that, by that act, the elective franchise (not any other) was limited to those having a freehold of the clear annual value of forty shillings; whence the class of forty-shilling freeholders. The institution of "*Freehold Land Societies*" is a valuable sign that the importance of a freehold stake is again beginning to be duly appreciated.

government, thus operating, that we must trace that continual sense of responsibility in those in authority, and that continual enforcement of that responsibility by the freemen, to which we owe the repeated and reiterated declarations and guarantees of the rights and liberties of the people which so remarkably abound in the earlier volumes of our Statute Book. Local self-government lies indeed at the very basis of free institutions, and is the only effectual guarantee for the responsibility of those in authority.

Local self-government may be actual and immediate, as when all attended the gemote, when it became an actual Folk-mote*, and which even now is the case at parish meetings and others; or it may be representative, in which case the representatives are of course immediately responsible to their brethren of the district by whom they are appointed. By institutions of local self-government alone is it possible that the interests of districts can be properly protected. By their existence alone can the full discussion and understanding of those interests be ensured. By their existence alone can be ensured that jealous watch over the encroachments of those entrusted with the management of the more general affairs of the nation which is necessary to prevent the gradual usurpation

* It is very interesting to notice the universal habit of holding folk-motes implied throughout the Anglo-Saxon laws; and the sanctity attached to them. Thus we find extremely heavy penalties denounced against the disturbers of the folk-mote. "If he disturb the folk-mote by drawing his weapon, one hundred and twenty shillings to the ealderman as penalty."—*Laws of Alfred*, § 38. And the possible occasion for them even on the most holy festivals is admitted. Thus; "Sunday-marketing we also earnestly forbid; and every folk-mote, UNLESS it be for matters of much need."—*Laws of Cnut*, § 15.

of an arbitrary power. As the protection of local rights and interests is thus best secured, and the mode of dealing with them necessarily best understood and most effectually carried out, so are the minds of all thus better prepared to understand and deal with affairs of more wide and general interest. It is, again, an extraordinary security against violence and anarchy that, by these local institutions, opportunity is given for legitimately and peaceably expressing the national will, and thus is prevented the adoption of measures which shall excite dissatisfaction and discontent. Freedom of opinion, freedom of discussion, the preservation of all free institutions, and the progress and full development of all the resources of any state, unquestionably depend, as will be more fully shown hereafter, on the maintenance of local self-government, and on the restricting, and jealously guarding against, all encroachment upon that local self-government by the general governing body. It is because local self-government stands in the way of empirical legislation on hasty crotchets and idle schemes that it is, above all things, hated by the authors and friends of Commissions and of Central Boards. It is because local self-government ensures that every proposition shall be really inquired into, discussed, and thoroughly understood before it is adopted, that it is, just now, the object of such especial dislike to those who delight in nostrums and new experiments; and that it has become the mark for their ceaseless attack.

For national and human progress local self-government forms the surest guarantee, affording as it does so many nurseries where emulation and individual enterprise are sure of bringing forth continual results,

whose benefits can never be confined to the corner of their birth. Under a system of centralization no idea can diffuse itself unless first made palatable to the, necessarily, self-elected few who guide the great machine, and who are, as necessarily, however honest, the least able to judge of the wants of the community.

Local self-government is the rock of our safety as a free state ; the only absolute security for the maintenance of the fundamental laws and institutions of the land, on whose maintenance wholly depends our peace, prosperity and progress. It has been reserved for our day to see this leading principle of the institutions of the country systematically attacked, and that by a government which calls itself "liberal," but which, under the "gilded dissimulation" of "improvement" and "reform," is loosening every safeguard and guarantee of our rights and liberties ; which sneers at and sets at naught institutions whose value has been tested by more than a thousand years of increasing prosperity and steady progress ; and which is now straining every effort to make every fundamental law and institution of the country bend beneath the yoke of irresponsible centralized commissions, the creatures of government nomination and patronage.

The institutions of local self-government being facts covering, as it may be said, the length and breadth of the land, find less actual allusion in recorded laws than do matters of a more abstract nature whose reiterated assertion was needed to keep before men the recollection of their importance. There will, however, be found to be allusions to these institutions scattered through the ancient and recorded laws sufficient to illustrate and establish the point of their having been

always held to be a part of the fundamental institutions of this country, and secured by its fundamental laws. Before citing these illustrations it will however be well, in order that all citations from recorded fundamental laws may find a place together, and thereby be better understood and their spirit better felt, to allude to another mode in which, from a very early period, a means of securing that *Responsibility* which is the object of all our fundamental laws and institutions was obtained.

In the earlier periods of our history those matters over which the various institutions of local self-government had exclusive control embraced most of the concerns which really were, in times of peace, of interest to the community, or of importance to its well-being. It required commerce to be widely extended before that infinite variety of circumstances grew up which placed every individual town and borough in relations, highly important to its well-being, to the whole community. Then it was that the importance became more particularly felt of securing, and insisting continually upon, the *Responsibility* of those to whom was entrusted the management of whatever affairs had reference to those last relations. The importance of, and therefore the interest taken in, those affairs gradually increased. The insisting on that *Responsibility*, and the necessity to the preservation of free institutions that that *Responsibility* should be so insisted on, increased with the increase of that importance and interest.

It is very obvious that no arrangements in which the whole body politic is concerned can be carried out without the essential means of money. Not only can

no public work at home or abroad be executed without this means, but the expenses incident to the various offices which become absolutely necessary for carrying out all the unavoidable arrangements become such as to demand large supplies. In order to obtain these appeal had to be continually made to the people for contributions. Here then our fathers found a great and important means of securing Responsibility. From very early times, earlier indeed than records will enable us clearly to trace, it was held to be a principle that the granting of those contributions was dependent on the will of the people. Thus was left in their hands the entire means of controlling the application of all moneys, as well as the power, which they took care always to exercise, of making the abandoning of any encroachments or the redress of any wrongs a condition precedent to the grant of any funds. The question of taxation is not, therefore, and never has been in this country, as often represented by narrow-minded persons, and even by some who should be better advised, an affair of the pocket only. It is an affair of the rights and liberties of the people, and of human progress. It is an affair of the responsibility of those in authority to those for whose benefit only they hold, and ought to exercise, that authority. In various early records this principle of the entire control of the people over taxation is asserted with different degrees of directness. It is idle to discuss, as some have mystified themselves and their readers by doing, whether or not a parliament met and discussed these matters in a particular way. Local self-government is really far more important for the protection of the rights and liberties of the people than even parlia-

mentary suffrage. The existence of such institutions secured the full discussion by the people of all questions of taxation, each place having the entire control over the apportioning and collection of all taxes. Hence whoever might form the witenagemote or the parliament for the time being took care to know well the sentiments of the people, and how far any imposition might safely go. Some writers may show great learning by telling us what the terms of extant writs may be. But there was a real representation of the people, and a real assent of the people to the laws,—not improbably indeed of each town to the taxation imposed,—long before writs were issued for the return of knights and burgesses to parliament. This point has been briefly touched upon already, and might be illustrated in detail. It becomes quite unnecessary, however, to discuss that question, inasmuch as nothing can be more explicit and distinct than the language of statutes earlier even than Magna Charta, as well as that of Magna Charta itself, upon this subject. To discuss whether or not certain exact words were repeated in sundry confirmations of that charter is idle. It is admitted on all hands worthy of regard that Magna Charta gave and granted nothing new, but that it was merely declaratory of the ancient Common Law of the land. The fact of the enunciation in it of the principles now alluded to is conclusive as to the question whether or not the entire responsibility of those in authority was then recognized and enforced as a fundamental law.

Some of the most remarkable and important of those solemnly recorded laws shall now be cited by which our fathers asserted, in the face of all time and all

mankind, those rights and liberties for which they were indebted to the grant of no man, but which they held as their inheritance, and asserted thus their claim to hold and, as free men, to hand down to their posterity. It will be most useful to give these details in chronological series. Their full force will thus be the more clearly seen. As we proceed attention shall be briefly called to the special purpose of each record cited. And the method thus adopted, of separating those matters which relate to what concerns the members of the community in their relations to the whole community from those which concern the rights of individuals as individuals, may perhaps serve to render the importance and actual nature of the fundamental laws and institutions of our country more clear and better appreciated than has been the case from the mere reprinting, as usually done, of the entire documents. Each necessarily included in itself both classes of objects. But, when several are compared, the true force of the whole is best seen by marking separately, in groups, the reiteration, again and again, generation after generation, of the same grand leading ideas.

The circumstances of the reign of William the First have probably not been yet considered in a sufficiently philosophical spirit. This reign has been treated of as separating by too wide and marked a line the government, laws, and succession to the crown as they existed under the monarchs who preceded him, and as they existed under those who followed him. An incorrect notion, and one of really serious consequence, has thus prevailed as to the origin and history of many of the fundamental laws and institutions of the country. That King William the First made use of force to

support the claims which he set up to the throne of England is undoubted; that, like many who preceded and have followed him, he was, by the employment of that force, successful in getting himself elected to the crown is equally undoubted. On the other hand it is no less certain that he felt that such election, by whatsoever means obtained, was necessary to his title. So also is it that, in order to obtain that election and maintain his position, he found it necessary to profess, at least, perfect devotion to the laws and institutions already existing in the land, and to swear that he would maintain them. The laws still extant which were promulgated in his reign bear ample evidence of this fact. The events of his reign offer but an illustration of what has been before remarked, that, in every age, there will be attempts made by those in authority to overstep the lawful limits of that authority, which efforts will be attended with more or less success according to circumstances. Were the ordinary notion of the circumstances and consequences of William's reign correct, the history of the laws and institutions of this country, and their actual condition, would be very different from what they are. By subterfuge, by breach of faith, and by aid of a foreign force he did much, but he did not succeed in upsetting any of the great fundamental laws and institutions of the country, which had had a being here for centuries before he set foot upon the land. And how ever much he may have attempted to trample them under foot to suit his own purposes, the example is one which has been often imitated since his time, and by none so systematically as by the modern authors of Commissions. But William the Conqueror never

eradicated the memory of those laws and institutions, or the determination of the people to hold fast by them.

These brief remarks on William's reign are necessary on account of the common notion that the Charter of John is the foundation of our liberties. Did the special limits of this work permit, the laws and institutions prevailing before William's time might be entered into ; and the result would only confirm the antiquity of those fundamental laws and institutions under which this country, through more than a thousand years of chequered history, has gradually risen to her present height of prosperity and power. It will be enough for the present purpose if allusion is very briefly made to some fundamental principles laid down in the laws promulgated in William's time, with such incidental references as these seem to call for.

The introductory clause to one group of the laws of William is itself an evidence at once of the importance attached by the people to the maintenance of their ancient laws and institutions, and of the necessity under which William was, whatever innovations he designed and, by fraud or force, accomplished, to profess attachment and obedience to those laws. That introductory clause declares the matter which follows to be "*the same laws and customs* which his predecessor and kinsman King Edward maintained*." Instead of overthrowing the ancient laws and customs by the introduction of a new system, those ancient laws and customs are thus simply re-declared and confirmed by the king and the great council of the nation.

* 1 Thorpe, p. 467.

Nor is this a singular instance of William's having been obliged to join in giving solemn sanction to the same principles. We find the supremacy of the ancient fundamental laws and institutions of England still more explicitly recognized in another record of the same reign. This is called, in existing editions, a charter. It should be understood, however, that no king of England ever had the power to make any laws of his own authority. No "charter" of a king is, in itself, of the slightest authority or force, however ancient its date. As a charter, in the ordinary modern sense of that word, it is mere waste paper. It is only by evidence or presumption of the so-called charter having been, in reality, a solemn act of the common council of the nation, or having received the assent of that common council, that it ever had, or can now have, any authority or be of any force. In former times the term "charter" was very generally applied to acts of this nature. These so-called charters are, in reality, statutes made by the king, with the advice and consent of the great council of the whole nation. In the same way some statutes, even of the highest importance, have, within very recent times, been called *Petitions*. Of this the "Petition of Right" forms a remarkable illustration. It is essential, then, not to be led away by mere names;—not to consider a document to be actually a grant from the crown because it happens to have the formal title of a "charter," any more than the parliament are considered to have been the humble slaves of Charles because they embodied some of the rights and liberties of the people in a document which is immortalized as a "Petition."

In the statute which has led to these observations

express reference is again made to the laws of King Edward. It is declared "that all shall have and keep the laws of King Edward in all things, with such *additions* as have been made for the common benefit*;" such additions being of such matters of regulation as already alluded to, and distinguishable from the fundamental laws which had come down from the times of his predecessors; though fully recognizing the latter throughout as the permanent *principles*, and as "the law and rule to make [such additions] by."

The laws of King Edward thus referred to are not, it may be observed, such imaginary things as many conceive who speak of the people merely calling for the laws of King Edward out of a vague tradition that things were better in his time than in that of William. The laws of King Edward were at that time well known. Illustrations of them, that is, regulations founded on them, and in accordance with the circumstances of the age, had been collected and, in express terms, declared and confirmed in Edward's reign; and these and others were carefully again collected and expressly sanctioned, and thus again confirmed, in the reign of William. But it was never pretended that the foundations of these laws originated even in the reign of Edward. On the contrary, history and the extant collections† themselves testify that those very laws existed and had been solemnly recognized in the time of King Edgar, sixty-eight years before Edward's time, as also, later, by King Cnut. And

* 1 Thorpe, p. 493.

† It will be enough to refer to 1 Thorpe, p. 462, and to pref. p. xi. *note*, of same volume; though the subject is capable of very full illustration.

the recognition of those fundamental principles in Edgar's time was by no means their original, as could easily be shown in detail were it not that it would be departing too widely from the present topic. The phrase "the laws and customs of King Edward" means therefore not something vague and indefinite, but something very definite and real and important. It refers to those fundamental laws and institutions which had been established by our Saxon fathers for ages ; which every king was, at his election, obliged to recognize and bind himself to uphold ; and which the people felt to be a well-known point round which they would rally at any and all times, and encroachment upon which they must and would resist unto the death, without compromise and without surrender.

A few further extracts from the laws thus again declared in the reign of William the First will show how the fundamental laws and institutions of the land were specially respected, and, further, that encroachment upon local self-government, the most important of those ancient institutions, was specially provided against.

"Let no one carry his complaint to the king unless he have failed to obtain right in his own hundred or county* ;" that is, under his own local self-government, within the limits of whose jurisdiction the authority of the general government is not to encroach. Again, in another statute, it is declared that reference shall be had to the hundred and the county, "*as our predecessors (i. e. Edward, Edgar, &c.) have declared*†:" a recognition, at the same time, of the ancient laws and of the ancient institutions of the land.

* 1 Thorpe, 485.

† 1 Thorpe, 493.

Again, in reference to markets, it is declared that there shall be no market "except in the *cities, boroughs, towns*, and safe places where the customs of the realm, and the common law, and the rights of the crown, *which were declared by our good predecessors*, may not be evaded or violated, but all may be done rightly and openly, and according to judgement and justice. *And for this were towns, boroughs and cities founded and built, that they may be for a safeguard to the people of the land and for a defence of the realm, and therefore they ought to be maintained with all their liberties and entireness and jurisdiction*" [ratione]*.

Such was justly felt to be the value of those institutions of local self-government which covered the land in William's day, and which he dared not attempt openly, and failed in any attempt covertly, to overthrow. In another chapter of the same statute it is declared "that all cities and boroughs, and towns and hundreds, and wapentakes of the whole kingdom, shall nightly keep watch and ward within their bounds against evildoers and enemies, as the sheriffs and aldermen, and reeves, and other bailiffs, and our servants, *shall provide for the general good in the common council*†." This is a most important clause. Recognising as it does to the fullest extent the institutions of local self-government, and that to them belongs the right and duty of watch and ward, it refers for certain regulations in respect to the mode of that watch and ward, which shall be of *general*, and not mere *local*, importance ("ad utilitatem regni"), to such provisions

* 1 Thorpe, 492.

† 1 Thorpe, 491. Compare 25 Edw. I. c. 6. "*Forsque de common assent de tout le Royalme, et pur le common profit de ceo.*"

as should be made by the *common council of the nation*, the witenagemote, the parliament. Thus was this great council recognized and solemnly declared to possess the only authority for making such regulations. Despotism did not then dare to arm itself with any "General Board," or "Commissioners of Police." And of whom is this great council thus incidentally shown to have been composed? Of the "vice-comites" or sheriffs, elected by the people, the aldermen, "prepositi" or reeves, and other bailiffs; that is, of all the recognized heads of the various local bodies, whether in towns, boroughs, cities, hundreds or counties, *together with* (and this is important—these were distinct from the former) "ministri nostri," those, probably, who have the special guardianship of the king's private rights. It is easy to split hairs about what constitutes a true representation of the people in parliament, but it is not easy to conceive a witenagemote or parliament more really representing the interests of the people than one so constituted must do; the institutions of local self-government, of which each member of the great council except the king's servants came up as the representative, being the best guarantee against reckless or corrupt enactments.

The important principle of the will of the people, and not that of the monarch, being the fundamental idea of the national union in this country, is thus found distinctly declared and insisted on in the days of the hardest handed of the kings who ever sat upon the throne.

The last quotation which shall be made from the laws of William is one of no less importance than any that has preceded. It embodies the solemn declara-

tion, so often afterwards repeated, and daily sought to be evaded by every king and minister from the time of William to the present hour, of the Fundamental Law that no taxes can be raised by any authority save the common assent of the realm in solemn council or parliament assembled. Nothing in the Great Charter of John, or in any declarations or protestations of later times, can be more explicit than the following:—"All free men of the whole realm shall have and hold their lands and possessions well and in peace free from all illegal [*injusta*] exaction and from all tallage; so that nothing shall be exacted or taken from them except their free service, which, *by law*, they ought and are bound to render us; as has been ordained, and as we have declared for ourselves and our heirs for ever, *by the common council of the whole kingdom**." Thus was William the Conqueror compelled to recognize it as a fundamental law that he could exact no tax without the previous consent of the *common council of the whole nation* ("totius regni"). This main point, which secures the direct responsibility of those who are entrusted with authority, and obliges them to come and ask for money before they can have it, and of course therefore to explain all the purposes for which it is wanted, and how it will be applied (a principle with which the Commission system is in *direct antagonism*), is here declared and placed solemnly on record beyond all impeachment. And it may be remarked, though further quotation of express passages is unnecessary, that the instances cited are by no means the only ones in which the phrases, "*as our predecessors have declared*," and "*as shall be ordained by the common council of the*

* 1 Thorpe, 491 : and see note †, p. 63.

whole realm" are found in the statutes of William's time. These are rather awkward facts for the theorists on the late origin of parliaments, but very interesting facts for the inquirer into the Fundamental Laws and Institutions of England.

Nor did the express subjection of the Norman kings to the fundamental laws and institutions of Saxon England end with William the Conqueror. William the First's son Henry was compelled to give his express assent to a statute, made in the common council of the realm, in which the existence and authority of the ancient fundamental laws were again declared. It is unnecessary to dwell long on this statute. It repeats allusions to what had been done in the time of King Edward as the test of what was lawful; alludes expressly to that which *should* be done as being that which *had* been done "from the time of his father and brother back to the time of others his predecessors;" and expressly specifies and confirms, more than once, the "Laws of King Edward*."

Stephen had to undergo the same ordeal. He pledged himself to more than one solemn declaratory statute and confirmation of "all the liberties and good laws which his uncle Henry king of England had confirmed, and all the good laws and customs which were enjoyed in the time of King Edward†."

It is unnecessary to quote the further confirmation of the same fundamental laws which took place, in almost the same words, in the time of Henry II. We may pass on to the more remarkable period of John.

The document known as Magna Charta has, on every account, the highest claim to be considered,

* 1 Thorpe, 500, 501.

† Folio edition of Statutes, p. 4.

what it has always been held to be, an embodiment of fundamental laws. There certainly never was, in history, an occasion of more literal convention between the different members of the state than is embodied in that memorable record. To the ecclesiastics of that day no less than to the laymen is a debt of gratitude owing for the firmness with which they resisted all attempts, by John and his successors, to evade the provisions of Magna Charta.

It is important, however, that it should always be remembered that Magna Charta broached no new theories of the rights of man, preached no new and revolutionary doctrines. It is justly said by Lord Brougham that *Magna Charta* was “*only a declaration of existing and violated rights**,” and Sir Edward Coke says, “It was for the most part *declaratory* of the principal grounds of the *fundamental laws* of England†.” In the “Charter of Confirmation” of 25 Edward I., it is expressly declared that all justices and others shall allow “the Great Charter of Liberties *as the Common Law*,” that is, as the law of ancient and untraceable tradition. It is further to be observed, that the Great Charter of John was not, and was not pretended to be, an affair between him and his barons only, as some have supposed. It contains within itself complete internal evidence of this fact; but positive evidence that it was, and was always considered as, a truly *national* convention, is to be found. Thus, in the “Covenant of Security,” entered into at the same time as Magna Charta itself was solemnly declared, and as a collateral security for its observance, the earls, barons “*and freemen of the whole kingdom*”

* Political Philosophy, vol. ii. p. 88. † Proem to 2nd Inst.

are expressly named as parties. Again, in 25 Edw. I. Magna Charta is declared to have been made by "common consent of all the realm."

The parts of the Great Charter which it relates to the present subject specially to cite, convey precisely the same ideas, are—and the fact is remarkable—in one important clause almost in the same words as have been cited from the Statutes of William the Conqueror. They embody a solemn declaration and confirmation of the two most important fundamental laws and institutions of the country,—local self-government, and the direct responsibility to the people of those entrusted with authority in the general government, as manifested in the necessity of their coming to the latter for all grants of money.

"No scutage or aid shall be imposed in our kingdom unless by the common council of our kingdom, except* to redeem our person, and to make our first-born son a knight, and once to marry our first-born daughter: and for these there shall be none but a reasonable aid.

"In like manner it shall be concerning the aids of the city of London.

"And the city of London shall have all its ancient liberties and free customs as well by land as by water.

"Furthermore, we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customs."

But the most remarkable point in Magna Charta is that those who were parties to it felt, as Coke expressed it four centuries later, when proposing the Petition of Right, that there was no use in trusting to

* See before p. 65.

“generals.” Some surer pledge than that was required, some stronger hold on the responsibility of the king. Accordingly it is expressly provided by the Great Charter that a committee of twenty-five barons should be appointed—not, as in the gross attempts at usurpation by modern Commissions, by the crown, but, elected; and that if any article of the Charter should be broken by the king or any of his servants, “the said twenty-five barons, *together with the commonalty of the whole land*, may distrain and distress us [that is, the king] all the ways possible, namely, by seizing our castles, lands, possessions, and in any other ways they can, *till the grievance is redressed according to their judgement*, saving harmless our own person and the person of our queen and children; and *when it is redressed* they shall obey us as before. And any person whatsoever in the kingdom may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and that he will distress us jointly with them to the utmost of his power; and we give public and free liberty to any one that will swear to them, and will never hinder any person from taking such oath.”

It would be impossible more emphatically to convey the idea of the *Responsibility* of those in authority to the will of the nation than is done in these very remarkable clauses. The people are made to be the sole judges of the observance or not by the king or any of his creatures of all or any the fundamental laws of the land, and of all or any the special regulations which the circumstances of the time rendered it important to embody, together with the re-declaration of fundamental principles, in Magna Charta. Instead of the

consciousness of a violation of their duties by those in authority leading them, and their having the power, to impose penalties on those who met to discuss their grievances, as has been often attempted in modern times, the people were, in the most solemn and emphatic form and language possible, declared to have the right and duty of resistance to such violations, and of swearing together "to distress by all ways possible" even the crown itself "till the grievance is redressed."

It has been already intimated that this was not the first time in English history that the king had been held personally responsible for a breach of the fundamental laws of the realm, nor was it by any means the last. It is, here as elsewhere, the fundamental *idea* which is to be ever remembered. It will be felt that this fundamental idea, on the immediately present point, is fully carried out by holding the Ministers of the Crown as the responsible parties instead of the Crown itself; while by this means the disasters and confusion and necessary disorganization which must result from actually "distressing" the Crown itself, the symbol of national unity, are avoided. The real mischief is that, at the present time, every effort is being strained, and too successfully, to make that responsibility of the Ministers merely nominal by means, mainly, of the universal system of Commissions.

It is unnecessary, however interesting it would undoubtedly be, to pass in review all the more than two-and-thirty solemn occasions on which this charter was expressly re-declared and confirmed. A few of these occasions and their attendant circumstances are,

however, so remarkable,—as showing the vast and just importance attached to the fundamental laws and institutions of the country,—that they must be briefly mentioned.

In the time of Henry the Third solemn re-declarations of the Charter several times took place. The circumstances attending two of these re-declarations are specially recorded. On these occasions the king was compelled personally to join in a solemn sentence of awful imprecation of the wrath of heaven, denounced, by order of the common council of the realm, through the archbishops, bishops and other ecclesiastics, on all who violated the Great Charter. The simple language of the historian impresses us with the awful solemnity of these scenes, and with the religious care with which our fathers thus sought, by the sanction of heaven itself, to guard against violation the liberties which they had inherited. The excommunication is declared to be pronounced “against the breakers of the church’s liberties and of the liberties or free customs of the realm of England, and especially of those which are contained in the charter of the common liberties of England and charter of the forest;” and the archbishop and bishops, apparelled in pontificals, with candles burning, “do excommunicate, accurse, and from the threshold of holy mother church cut off all those that hereafter willingly and maliciously deprive or spoil the church of her right; and all those who,—the liberties of the church, or the ancient and established customs of the realm, and especially the liberties and free customs which are contained in the charter of the common liberties and of the forest granted by our lord the king to the archbishops,

bishops and other prelates of England, earls, barons, knights and freeholders,—by any art or device shall violate, break, lessen or change, secretly or openly, by deed, word or council against them or any of them, in any article whatsoever ; and all those that against them or any of them, shall make statutes, or observe them being made, or shall bring in customs, or keep them when they be brought in, and the writers of such statutes, and also the counsellors and executioners of them, and all those that shall presume to judge according to them.” And the historian tells us that after this imprecation had been uttered, and when the candles, put out, had been hurled, as was the solemn form, upon the ground, and the fumes and the stench thereof rose offensive to the nostrils and to the eyes of all there standing round,—“ So,” cried the archbishop, “ even so let the damned souls be extinguished, smoke and stink of all who violate this charter or unrighteously [sinistrè] interpret it.” And after a like ceremony had, on another occasion in the same king’s reign, been gone through, the same historian tells us that “ Robert bishop of Lincoln fore-knowing in his heart, and fearing that the king would fall back from his plighted faith, immediately on his return to his diocese caused that excommunication to be solemnly pronounced in every parish church within his diocese, the number whereof was greater than can well be told :—which sentence of excommunication might well indeed ring in the ears of all who heard it, and fill their hearts with no slight dread*.”

And the attempted usurpations of a more powerful king than Henry III., instead of causing the liberties

* Matthew Paris (Wats’ edit.), pp. 742, 746.

and fundamental laws and institutions of England to be violated with impunity, became the occasion of still more determined struggles for their maintenance. King John himself was at no time compelled to a more categorical admission of his responsibility, and more specifically to join with the common council of the nation in solemnly declaring the nature of those fundamental laws and institutions, than was Edward I. The statute 25 of his reign, commonly called the "Confirmation of Charters," needs to be cited at full length. Every clause of it is important, and would, if space permitted, justify extensive comment. It must be enough now to call attention to the points,—1st, that the laws and liberties of the realm are thus solemnly re-declared only, not granted or newly asserted; 2nd, that the like declarations are stated, on the face of this statute, to have been, in former times, made by the common consent of all the realm; 3rd, that the laws and institutions alluded to in Magna Charta are declared to be the common law of the land; 4th, that the perpetual security of full responsibility is expressly re-declared by most specifically tying up the hands of the *king and his ministers* from asking (and therefore using) any taxes of any sort,—either direct under name of aids, subsidies, &c., or indirect in the shape of tolls and customs,—without the express assent of all the realm; 5th, and not least important, that no tax asked for was to be had or used except for the *common profit of all the realm*, and not therefore for any local purpose or to encroach upon any rights of local self-government. Finally, the utmost care was again taken that not only should the fundamental laws thus re-declared have the most solemn sanction

of the national will, *and be, moreover, kept constantly before the eye of the people*, but that their observance should be enforced by the awful sanctions of religion in the most solemn manner in which those sanctions could be applied.

“ Know ye, that we, to the honor of God and of holy church, and to the profit of our realm, have declared for us and our heirs that the Great Charter of Liberties and the Charter of the Forest, *which were made by common consent of all the realm* in the time of King Henry our father, shall be kept in every point without any breach. And we will that the same charters shall be sent under our seal to our justices as well of the forest as to others, and to all sheriffs of shires and to all our other officers, and to all our cities throughout the realm *, together with our writs, in the which it shall be contained *that they*

* It is another important illustration of the determination of our fathers that no means should be left unused to make the rights and liberties which they had inherited known to all, and so observed and kept and insisted on by all, that originals of the great charter, counterparts as we should now call them, were thus sent to all parts of the country. These statutes were not merely *passed*, as modern acts of parliament are. They were, in the fullest sense of the word, *published* to all the nation ; and an original written record of them was open to every man to see. Thus, the most perfect extant original of the Magna Charta of John belongs to Lincoln Cathedral ; of that of Henry III. to Durham Cathedral ; and the original of an inspeximus and confirmation of the same charter by Edward I. is in the archives of the City of London, annexed to which is a writ addressed to the city, and directing the publication of the great charter within the city. Numerous other like instances might be cited ; and the knowledge thus secured in those days is all that is needed in our day to make all classes, as well as those in authority, unite in still maintaining the integrity of those fundamental laws and institutions thus so often declared and re-affirmed.

cause the aforesaid charters to be published, and to declare to the people that we have granted to hold them in all points ; and that our justices, sheriffs, mayors, and other ministers which under us have the laws of our land to administer, shall allow the said charters pleaded before them in judgement in all their points, that is, to wit, the Great Charter of Liberties as the Common Law, and the Charter of the Forest for the good of our realm.

“ And we will that *if any judgement* be given from henceforth *contrary to the points of the charters aforesaid* by the justices, or by any other of our ministers that hold pleas before them against the points of the charters, *it shall be undone and holden for nought.*

“ And we will that the same charters shall be sent under our seal to the cathedral churches throughout our realm, there to remain, *and shall be read before the people two times by the year.*

“ And that the archbishops and bishops shall pronounce sentences of excommunication against all those that by *word, deed, or COUNCIL*, do contrary to the aforesaid charters, or that in any point break or undo them. And that the said sentences be twice a year denounced and published by the prelates aforesaid. And if the same prelates, bishops, or any of them, be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York for the time being shall compel and distrain them to the execution of their duties in form aforesaid.

“ And forasmuch as *divers people* of our realm are in fear that the *aids and tasks* [taxes] which they have given to us beforetime towards our *wars and other business*, of their own grant and good will (howsoever

they were made), *might turn to a bondage to them and their heirs*, because they might at another time be found in the rolls; and likewise the prises taken throughout the realm by our ministers in our name: We have granted for us and our heirs that we will not draw such aids, tasks nor prises into a custom for anything that hath been done heretofore, be it by roll or any other precedent that may be founden.

“Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to *all the commonalty of the land*, that FOR NO BUSINESS from henceforth we shall take such manner of aids, tasks [taxes] nor prises, BUT BY THE COMMON ASSENT OF ALL THE REALM, and for the COMMON PROFIT THEREOF, saving the ancient aids and prises due and accustomed*.

“And for as much as the more part of the commonalty of the realm find themselves sore grieved with the duties taken on wools, that is, to wit, a toll of forty shillings for every sack of wool, and have made petition to release them of the same; we, at their request, have clearly released it, and have granted that *we shall not take that, OR ANY OTHER, without their common assent and good will, saving to us and our heirs, the customs of wools, skins and leather granted before by the COMMONALTY aforesaid.*”

It is impossible for the reader not to be again struck with the identity in idea and intention, in many parts in words, between the fundamental principles declared in this statute, and those declared, not only in the Great Charter of John, but in the statute of William

* See before, p. 63.

the Conqueror. Not *granted* by the last-named king or by any of his predecessors or successors, but traced back from them to the times of earlier Saxon kings, each succeeding statute and charter was but the solemn re-declaration of the fundamental laws and institutions of the realm ; thus formally recognizing and reiterating them out of a careful regard that those laws and institutions should never die out of the memory of the people, or, under plea of ignorance, be invaded by those in authority. The sentence of excommunication which was pronounced in accordance with this last statute has been preserved, and breathes a like spirit. “ We admonish,” declares the archbishop, “ all those of the realm of England, once, twice and thrice,—because that shortness of time will not suffer more delay,—that all and every of them, of what estate soever they be, as much as in them is, do uphold and maintain these things granted by our sovereign lord the king in all points ; and that neither they nor any of them do resist or break, or in any manner hereafter procure, counsel, or any ways assent to, the resisting or breaking of them, or go about it by word or deed, openly or privily, by any manner of pretence or colour. And we the foresaid archbishop do excommunicate all such, and them from the body of our Lord Jesus Christ, and from all the company of heaven, and from all the sacraments of holy church, do cut off. *Fiat. Fiat. Amen.*”

That man is not to be envied who can read these denunciations of the wrath of heaven upon all violators of his country’s liberties unmoved. When Crassus, despite the protestations of the people’s tribune, would lead an army forth from Rome to gratify his

own avarice and ambition, Ateius invoked against him the wrath of gods whose names it was terrible to utter. Woful disasters befel that expedition, not unconnected with the moral influence of that solemn uttering of those imprecations. The thunders of ecclesiastical anathemas may have little weight in our day ; but the stern and holy purpose with which those anathemas have been heretofore invoked to protect the liberties of Englishmen from violation, cannot be marked by any man, not callous to all noble and all human feelings, without a sense of deep religious awe. The curse which Saint Edward the Confessor was invoked to hurl on the violator's head may be invoked in vain, but the spirit which invoked that imprecation is not dead : and, while it lives, the echo of the imprecation should not die out of the ear of any *Law-worth* man.

It is a remarkable circumstance, and adds much to the importance of the statute last-cited, that, whereas the crafty king sought to evade the demand of the people embodied in that statute, by adding, at the end, the words " saving the rights of the crown *," the statute was indignantly refused, both by the barons and by the citizens of London, to be accepted in those terms, as, at a later period, the assent to the Petition of Right under a very similar evasion was refused ;

* These words, which open the door to all kinds of mischief, litigation and doubt, are very commonly inserted in modern acts of parliament by those whose interest lies in violating the rights and liberties of the people, and keeping open some ground for meddling interference or vexatious obstruction. The words may, of course, mean anything or nothing, and cannot, by any possibility, be ever *honestly* inserted in any act of parliament.

and the king was compelled to pledge himself to the "Confirmation" without any such clause ;—the only saving allowed being of certain trifling aids, ancient and accustomed and defined by law, as already seen, and those customs of wool, &c. which had then before been definitely granted *by the commonalty*. This powerful and successful king was thus compelled, in the most emphatic way, to admit that he held no authority but for the good of the people, and that he was responsible to them for every act ; that there were, indeed, no "rights of the crown" whatever which he could claim independent of their will. So Lord Coke remarks of Edward's predecessor Henry, that, in the charter declared in his reign, there "is not any saving at all for the king, his heirs, or successors ; to the end that *the king, his heirs and successors*, against all pretences of evasions should be bound by all the branches of both these charters.*" It cannot but be matter of great surprise that many distinguished authors who have written on the English Constitution should have imagined, and taught, that that constitution dates from the time of Edward the First. Concessions would never have been wrung from him which his less powerful predecessors had resisted. Such views are only painful evidence how little the real history of our fundamental laws has been studied. It has been conclusively shown in the preceding pages that there is no point contained in the charter of Edward the First which had not been declared and insisted on as fundamental law centuries before his time, and before and even in the days of his ancestor William the Conqueror.

* 2 Inst. 77.

Nor was the reign of Edward suffered to pass without yet further declarations of the same fundamental laws. The celebrated statute “De tallagio non concedendo” (*the non-grant of taxes*) was passed in this reign. It is quite needless to discuss any doubts which have been thrown on the exact date of this statute. Its express recital and confirmation in the Petition of Right, when the king’s friends would have been too glad to have impeached it if they could, is quite sufficient.

It will be unnecessary to quote the whole of this statute. Like all the others cited it is simply re-declaratory of the ancient fundamental law. The two following sections are the most important; the comments of Lord Coke on which are so remarkable, that, had they been written by him specially with reference to the subject of the present work—the illegality of all Crown-appointed Commissions—it would not have been easy to have used language more precisely to the point.

“No tallage or aid shall be taken or levied by us or our heirs in our realm without the good will and assent of the archbishops, bishops, earls, barons, knights, *burgesses*, and *other freemen* of the land.”

“And for the more assurance hereof we will and grant that all archbishops and bishops for ever shall read this present charter in their cathedral churches twice in the year; and, upon the reading thereof in every of their parish churches, shall openly denounce accursed all those that willingly do, or *procure to be done*, anything contrary to the tenor, force, and effect of this present charter in any point or article. In witness whereof we have set our seal to this present

charter, together with the seals of the archbishops, bishops, earls, barons and others, which voluntarily have sworn that as much as in them is they shall observe the tenor of this present charter in all clauses and articles, and shall extend their counsel and faithful aid to the keeping thereof for ever."

Lord Coke in treating of this statute dwells on the causes which led to its enactment, and which add to the force it carries with it in its declaratory portions. "There were two causes," says he, "of the making of this act; the first was" a requisition of the king to some of his barons and others to follow him in arms to Normandy, or contribute money aids thereto. "Which the constable and marshal, and many of the nobility and of the knights and esquires, *and all the freeholders*, VEHEMENTLY DENYED, *unless* it were so ordained and determined by common consent of parliament."

"The second cause was that the king the year before had taken a tallage of all cities, boroughs and towns without assent of parliament; whereupon grew great murmuring and discontentment among the commons. *For pacifying of which discord between the king and his nobles, and for quieting of the commons, and for a PERPETUAL AND A CONSTANT LAW for ever after* both in this and other like cases, this act was made*." That is to say, the king had succeeded, by a gross act of usurpation, in doing that which was illegal in one instance. But that single instance of violation roused the whole people, BECAUSE it was a violation of their known laws and liberties, and these measures were taken to compel the king to an acknowledgment, by

* 2 Inst. 532.

a perpetual record against him, of his violation of the law. It was a triumph of law over usurpation ; and on the determined purpose which has oftentimes led to such triumphs, the preservation of English liberties always has depended, and always must depend. Far more extensive and dangerous usurpations are going on in our day.

Coke proceeds, dealing with the terms of the statute itself: "this is as much as to say that no subsidy, task [tax*], tenth, fifteenth, imposition or other aid or charge whatsoever shall, by the king or his heirs, be put or levied without the common council of the realm, THAT IS, by the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and others of the counties ; that is to say, by grant and common assent in parliament. Within this act *are all new offices erected with new fees, or old offices with new fees ; for that is a tallage put upon the subject*, which cannot be done without common assent by act of parliament. And this doth notably appear by a petition in parliament in anno 13 Henry IV.; where the commons complain that an office was erected for measurage of cloths and canvas, with a new fee for the same, by colour of the king's letters-patents, and pray that these letters-patents might be revoked, *for that the king could erect no offices with new fees to be taken of the people, who may not so be charged but by parliament.*

"The royal answer of the king in parliament was that *the statutes therefore provided* shall be observed, which statutes were the said act of 25 Edw. I. and this of 34 Edw. I. &c.; and accordingly judgment was

* So A. S. *acsian*, corrupted to "ask."

also given in the King's Bench : so as this point was both resolved in parliament and adjudged by law according to these statutes, and hereby it appeareth that these were acts of parliament.

“ King Edward the Third had granted to Robert Poley a new office of measuring of worsteads with a new fee ; and it was, at the petition of the commons, resolved in parliament to be *void*, and afterward re-voked as void by authority of parliament, *and the like law is in all like cases*.

“ Note : that the words of this branch are general ; so as all tallages, burthens, or charges put upon the subject by the king, either to or for the king or to or for any subject, *by the king's letters-patent, or other commandment or order*, is prohibited by this act unless it be by common assent of parliament*.”

Little did Lord Coke dream of the millions of money the payment of which, within two centuries after his time, would be directly imposed on the people, and of the offices and officers which would be created, at the mere motion of the ministers of the crown, without the slightest regard to the assent of parliament, without, indeed, even taking the trouble to allude to the matter within the walls of parliament until the amount is simply demanded in order to pay what has been thus arbitrarily incurred †.

Before quitting the reign of Edward the First it is proper to refer to another statute passed in that reign, and which, besides containing a confirmation of the

* 2 Inst. p. 533, &c.

† See Book 2, ch. 1 and 2, for the enormous amount of taxation thus illegally imposed upon the country by Commissions in violation of the *known, established, and fundamental law of the land*.”

Great Charter, is of no little interest on two other grounds: *first*, as showing the immense importance always attached by our fathers to making the declarations of the fundamental laws contained in the Great Charter thoroughly known to all the people; *second*, as an example of what was the only sort of "Commission" which our fathers would put up with if there was one at all—that is, one appointed by *popular election*. The 28th Edw. I. st. 3, the same statute, it may be remarked, which in express terms recognizes and confirms the ancient common law right of the people in each county to elect their own sheriffs (cap. 8), after reciting that breaches of Magna Charta had taken place because no adequate punishment had been provided, proceeds to enact "That the charters be delivered to every sheriff of England, under the king's seal, to be read *four times in the year before the people in the full county*." In the statute last cited they were to be read in all churches. In other statutes it has been seen that they were to be delivered to all sheriffs and other bailiffs, to be published to the people. But this statute is still more specific, requiring that the Great Charter shall be openly read in the county court four times in the year, and on four specified days, being those of the greatest gathering of the people there: "that is, to wit, at the next county day after the feast of St. Michael, and at the next county day after Christmas, and at the next county day after Easter, and at the next county day after the feast of St. John (Midsummer). And for these two charters to be firmly observed in every point and article where before no remedy was at the common law, *there shall be chosen in every shire-court, by*

the commonalty of the same shire, three substantial men, knights or other lawful [law-worth*] wise and well-disposed persons, which shall be justices sworn and assigned by the king's letters-patents under the great seal to hear and determine, without any other writ but only their commission, such complaints as shall be made upon all those that commit or offend against any point contained in the foresaid charters in the shires where they be assigned ;" with full power to punish all offenders. It had been already provided by the statute of Marlbridge (52 Hen. III. c. 5), that the Justices in Eyre and the sheriffs in their counties should take cognisance of the observance of Magna Charta. The appointment of persons whose special and only duty it was to see that all its provisions were well kept, serves to mark the paramount importance attached to the rights and liberties recorded in it, and the determination to uphold them.

Passing over details which, however interesting, would occupy too much space now, we find in the reign of Edward II. one very important record, in which the same principle is very emphatically and specifically re-declared which has been seen to have been declared at every troubled time in English history. In the fifteenth year of Edward II. it was solemnly enacted, that " the matters which are to be established for the estate of our lord the king and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in parliament by our lord the king and by *the assent of the prelates, earls, and barons, and the commonalty of*

* See this word explained in Book II. Chapter III.

the realm, ACCORDING AS IT HATH BEEN HERETOFORE ACCUSTOMED *."

In Edward the Third's time parliaments were more than once required to be held "every year once, and more often if need be†"—"for *maintenance of the said articles and statutes* [*i. e.* Magna Charta, &c.], and redress of divers mischiefs and grievances which daily happen." This amounts to a re-declaration of the principle that nothing whatever affecting the relations of any part of the community to the whole is at any time to be done without the express assent of parliament and the whole realm; and that it is the duty of parliament, above all things, to see to the maintenance, in all their integrity, of the fundamental laws and institutions of the land.

The reign of Richard II. cannot be passed over without remarking that, not only was there a formal complaint made, and redress demanded, by the commons in parliament, of "defects in the administration as well about the king's person and his household as in his courts of justice‡, &c." and calling upon him to "remove evil ministers and counsellors," but, after many years of misgovernment, he was solemnly, and on full consideration, and by a most formal proceeding, deposed from the throne by the whole estates of the realm, and another person and family elected to fill that throne§. That deposition, and the election of the new king, and the settlement of the throne upon him and his heirs by statute, were at the least as for-

* Statutes of the Realm, folio, p. 189.

† 4 Edw. III. c. 14; 36 Edw. III. c. 10.

‡ Rot. Parl. vol. iii. p. 100.

§ Rot. Parl. vol. iii. p. 416.

mal, as solemn, and as carefully legal as the transactions which took place at the abdication of James II.; and the circumstances are fully as instructive to the student of the English constitution.

We may most usefully pass on next to the memorable æra of the Petition of Right. The whole tenor of that important document cannot be too carefully considered. At that time, when the House of Commons contained men of the highest ability, and whose energy and spirit were cordially backed by the people; when the attempts at usurpation and the violations of the law were keenly felt, and the determination to resist that usurpation and those violations was fully aroused; we do not find any vague and indefinite theories of the rights of man put forth, or any new constitutional doctrines broached*. Our fathers wisely determined to act on the advice of Sir Edward Coke, and not to put up with any evasive "generals," but to oblige the king to speak "by a record and in particulars." It was felt that the true course was, not any sweeping empirical measure of what may be disguised under the name of "Reform," but to consult the ancient records of their fundamental laws and institu-

* The reader will remember carefully to distinguish this parliament from the "Long Parliament," which latter afforded proof how a parliament, as well as a king, may prove an arbitrary tyrant if unchecked; and which openly violated the fundamental laws of the realm without any compunction whatever. Men in that day quoted the Petition of Right against the usurpations of the parliament as much as ever it had been relied on against the usurpations of the king. The wisdom of the course pursued by the parliament in the third year of Charles the First is only the more clearly seen from the results of the very opposite course pursued by the Long Parliament.

tions ; to take their stand upon those ; and, as their fathers had done before them on like occasions, to require the re-declaration and re-confirmation of those fundamental laws and institutions. They put up a petition, not of *grace*, nor even of *redress*, but a “Petition of RIGHT.” No evasion was allowed. The answer by which the king first sought to elude the object of this Petition of Right was indignantly rejected, as was an amendment to the same effect sought to be introduced into the petition by the lords. The king was compelled to give his unqualified assent to this “Petition of *Right*” in that form which constituted it a statute and perpetual legal record of the rights and liberties of Englishmen. It is unnecessary to cite this memorable statute at length, inasmuch as it claims no single new matter. It relies entirely upon the ancient fundamental laws of the land, some of which it cites in detail, and “*by which, the statutes before mentioned,*” it proceeds, in language of peculiar dignity, “*and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent in parliament.*” And after laying down, as matter of simple fundamental law, certain other very important points, to which attention will be hereafter called, it concludes:—“All which they most humbly pray of your most excellent majesty as their rights and liberties *according to the laws and statutes of this realm . . .* And that your majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure that in the things aforesaid *all your officers and ministers*

shall serve you according to the laws and statutes of this realm, as they tender the honour of your majesty and the prosperity of this kingdom."

It is worthy of especial attention at the present time, as showing how our fathers acted when the responsibility of ministers was heretofore sought to be evaded and the control of parliament over taxation to be made merely nominal, that "it was frequently declared by the commons in this parliament: That the old custom and use of our parliament constantly hath been, and ought to be, to debate and redress all public grievances, *and re-establish and secure their violated great charter, laws, rights, and liberties*, in the first place of all, before they debated or granted any aids or subsidies demanded of them (though never so pressing or necessary); it being both dangerous, imprudent, and a *breach of their trusts towards the people who elected them*, to play an aftergame for their liberties, laws, and grievances, *which would never be effectually redressed* after subsidies once granted. Whereupon they *refused* to pass the Bill of Subsidies then granted till the Petition of Right was first assented unto, enrolled, and their grievances redressed by the king*."

It may safely be affirmed that the chief debt of gratitude which we owe to the noble-hearted men who drew up and insisted on the unqualified assent to this "Petition of Right," is due to them because, notwithstanding their strong sense of existing grievances and of violated laws, they were not led away into any novel notions of experiment, as they might well have been, but that they thus took their stand upon the fundamental laws of the realm. We learn that the whole

* Prynne's *Demophilos*, p. 12.

matter was carefully and cautiously discussed, and that, “after many learned arguments by Sir Edward Coke, Mr. Noy, Mr. Selden, Mr. Littleton, Mr. Masen, Mr. Creswel, Mr. Shervile, Mr. Sherland, Mr. Bancks, Mr. Rolls, Mr. Balls, with other lawyers and able members of the House of Commons*,” the opinion of the House was taken and given *nemine contradicente*; and it was, among other important matters, solemnly resolved, “that it is the ancient and undoubted right of every freeman that he hath a full and absolute property in his goods and estate; and that no taxes, tallages, loans, benevolences, or other charge ought to be commanded, imposed, or levied by the king or his ministers without common consent by act of parliament.” And when the lords sought to gild the pill contained in the Petition of Right, and so to make it more palatable to the king but of little value to the people, the Commons, while absolutely refusing to assent thereto, gave their reasons for that refusal, to the effect that “there is in the king no sovereign power or prerogative royal to enable him to dispute with, or take from, his subjects that *Birthright and Inheritance* which they have in their liberties *by virtue of the Common Law and these Statutes*, which are *merely positive and DECLARATIVE*, conferring or confirming, *ipso facto*, an *inherent right* and interest of liberty and freedom in the subjects of this realm as a *birthright and inheritance descended to them from their ancestors, and descendible to their heirs and posterity*. But the sovereign power wherewith he is entrusted is *ONLY* for the protection, safety, and happiness of his people, *in preserving this their inherent birthright and inheritance*

* Prynne's Demophilos, p. 2.

of liberty and freedom, and those laws and statutes which ratifie and declare them." It was well felt that their strength lay in claiming and insisting on the ancient fundamental laws of the realm, and not in broaching any novel theories or rash experiments.

Those fundamental laws involve, as has been shown, *principles*, not matters of detail. They run no danger of being confounded by any earnest inquirer with those dry husks which are too often mistaken for laws, but which are, in reality, but as the shell after the kernel has perished, the skeleton after the soul has fled, the *accidents* of an illustration after that which was once a true illustration has ceased to be so, its essentials having all decayed away. Had it been written in the ancient records of our laws that Gatton and Old Sarum were for ever to send two members each to parliament, such a record would have manifested, on its own face, the want of any leading idea or principle in the mind of its promulgators which could give it any claim to the character of a fundamental law. But the fundamental laws which have been dwelt on and traced back to such a remote period bear a very different stamp. They enunciate principles which are changeless, though the mode and instances of the illustration of those principles may continually change. They have reference to certain general circumstances which, in a country like England, must always exist. Those principles to which attention has been specially directed in this chapter, and whose express recognition in England for more than eight centuries has been demonstrated, are that, in this land, *the will of the people is the only foundation of the authority of those to whom the functions of government may,*

for any time being, be entrusted ; that some definite means must always be had recourse to of ascertaining that will ; that all in authority are to be, at all times, directly responsible, for every act, to that will ; that no new step can be taken, or new office created, but AFTER express appeal to that will ; that all local affairs shall be managed and controlled by local bodies only,—general affairs affecting the common good of the community being those only in the management of which it is proper for the general government to interfere. A change in the particular mode of ascertaining the will of the nation, which a change in the condition and habits of society may require, is not, necessarily, (other conditions which cannot here be entered on being observed) any violation of the fundamental laws of the realm. But any compulsory interference with private or local interests ; any attempt to obtain irresponsible power, theoretical or actual ; any attempt to place authority in the hands of parties responsible only to the crown and not immediately responsible to the nation ; any institution or maintenance of bodies or officers by which charges are imposed or directly or indirectly incurred without every such charge having, *first*, the specific and express assent of the people's representatives ; any attempt to incur expenses first and afterwards go to parliament with a mere statement of those expenses and ask funds to meet them ; is a clear and open violation of the fundamental laws of the land. It is on these grounds, among others to be hereafter shown, that Commissions are illegal. There is not one point in which such Commissions are not a direct violation of the Petition of Right. It may be truly said of them, in the words of the stat. 16 Car. I. c. 14, that they are

essentially and in their very nature “contrary to and against the laws and statutes of this realm, the right of property, the liberty of the subject, former resolutions in parliament, and the Petition of Right.”

It is unnecessary to dwell upon the Bill of Rights of the last revolution. Though drawn up by less able men than was the Petition of Right, and with obviously less attention fixed on *Principles*, it does, in point of fact, take its stand upon the same ground as we have seen to have been taken for more than six centuries before. It assumes the existence of certain fundamental laws, of which the instances specified in the Bill of Rights itself must be taken as illustrations. It recognizes and affirms the clear duty of the people to “vindicate and assert their ancient rights and liberties,”—“as their ancestors in like case have usually done.” It emphatically “*claims, demands, and insists upon* all and singular the premises *as their undoubted rights and liberties* ;” terms which of course assume the existence of certain fundamental laws which “will have no sovereign.” The same is no less expressly declared in the act for establishing the coronation oath, which, as having been passed at the same time and under similar circumstances, has all the force of a thing done in national convention. “Whereas,” it is declared, “*by the law and ancient usage of this realm the kings and queens thereof have taken a solemn oath upon the Evangelists at their respective coronations to maintain the statutes, laws and customs of the said realm* ;”—and it proceeds to require the administration of such an oath to every future king or queen.

It has been seen that, according to the fundamental

laws of this country, neither the king nor any of his ministers has any power or authority, under any pretext whatever, to adopt any course of proceeding, or issue any ordinances, or appoint any offices or officers, or take any step by which any charge shall be incurred, without the common consent of all the nation *first* had and obtained. It has been further seen that whatever is done, in any or either of these respects, “ must have two special properties, the one in the creation, viz. that it be given by the common consent of the whole realm in parliament ; the other in the execution, viz. that it be given and employed for the common benefit of the *whole realm*, and not for private or other respects* ;” that therefore local affairs can only legally be intermeddled with by the general legislature in so far as the *general* welfare is concerned, the right of local self-government being an inherent and hereditary right and fundamental principle, recognized, declared and insisted on from the earliest times.

It is obvious that as any direct violation of these restrictions is a violation of the fundamental laws of the land, so is any indirect and practical violation of them (though outward forms may be observed) no less so. Before concluding this chapter it will be desirable, then, to notice some modes of the violation of those fundamental laws, other than those hereafter to be dwelt on in relation to Commissions, which are being daily practised and from which the greatest mischiefs actually follow.

It is self-evident that the requirement that all laws shall be passed and moneys obtained with the consent

* Coke, 2 Inst. 529.

of the nation, through the parliament, implies a reality, and not an empty form. But a practice has grown up of flagrantly violating this first principle of our fundamental laws by bringing in, at the close of a session, a number of bills and hurrying them through the forms of parliament, when there is no possible time for them to be well-considered, either by parliament-men or people, and when, moreover, the greater number of members have left town.

“The policy of the Government and of the Commissioners is to hurry their bills through with such rapidity, that very little time is given to those who suffer by them for consideration and remonstrance, and we must be prepared for the worst beforehand. You are cashiered and confiscated before you can look about you :—if you leave home for six weeks, in these times, you find a Commissioner in possession of your house and office*.”

This is indeed a crying grievance. The consequence is, that important bills are hurried through without the public being in the least degree aware of it, and without the possibility of any discussion of their merits either in the house or out of it ; that important alterations are surreptitiously introduced without the public having the least knowledge of the fact ; and that enormous money votes are passed,—not only not by the “common consent of all the realm,” but, without the realm knowing anything whatever about the matter, and for purposes to which the realm, if it knew them, would never assent. Thus the executive, in fact, makes laws to suit its own purposes, and to cover from the reach of justice transactions corrupt

* Sydney Smith’s first letter to Archdeacon Singleton.

in themselves and highly pernicious to the public interests. Thus also does it impose what new offices and charges it pleases in very comfortable contempt alike of the fundamental laws of the land and of the rights and liberties of the people. Instances of this kind of very recent occurrence will be hereafter cited.

Against such a mode of violation of the fundamental laws of the realm every honest man is bound to raise his voice. We are not without record of what our fathers did under like circumstances, or rather under circumstances which amounted to an actually less violation of good faith and of the fundamental principles of the constitution;—for it is certainly worse to observe empty forms and to violate the substance, than, from the very nature of the machinery adopted, to run into errors. In the reign of Henry V. it was found that the bills which had passed through the House of Commons in the usual form of petitions had, when put into their formal shape on the roll of parliament, often undergone changes which modified their meaning, a thing, indeed, hardly possible to avoid. The evils of this became strongly felt, and the adoption of a different method was insisted on, by which no alterations whatever could be made except under the immediate control, and with the express assent, of parliament.

The record of the claims made and admitted on this occasion is, like every other fundamental law of the realm, directly violated by the system thus now in practice. The Commons in that record declare, and it is expressly allowed, that “it hath ever been their liberty and freedom that there should *no statute*

nor law be made otherwise than they gave thereto their assent ; considering that the commons of the land, the which is and ever hath been a member of your parliament, are as well assenters as petitioners : that from this time forward, on complaint by the commons of any mischief asking remedy by mouth of their speaker for the commons, or else by petition written, there never be any law made thereupon, and engrossed as statute and law, neither by additions nor by diminutions, by no manner of term nor terms the which should change the sentence and the intent asked by the speaker's mouth or the petitions before said given up in writing in the manner aforesaid, without assent of the aforesaid commons."*

It must be clear that no measure has really the assent of the commons, much less the "*common consent*

* Rot.Parl.vol.iv.p.22. See also ib.iii.p.523; and 4 Inst.25. In the edition of the Public Health Act by Mr. Lawes much is said about errors in the Queen's printer's copies of that Act; and much merit is made of *correcting* the Act by the engrossment. This seems a very gratuitous insinuation against the printers, and, most probably, an unjust one. The *printed copies* were, unquestionably, what passed the Houses of Parliament as *the Act*. Errors in the engrossment are far more probable than in the printed copies. The frequent existence of errors in the engrossments is notorious to every student. I will only refer to Coke's 4 Inst. as above, and to the note 1, p. xxxi of the Introduction to the folio edition of the Statutes of the Realm. It is obvious that, if any other than the original printed copies be allowed to be taken as the standard, any thing, differing however much from the real Acts which pass through Parliament, may be foisted on us as statutes, and an inexperienced eye may admire the superior air of accuracy assumed, instead of feeling that all confidence in accuracy must be lost. At present *there are two different editions of the Public Health Act, with variations*; both of which courts of law are bound to receive, and admit as evidence of the contents of the Statute!!

of all the realm," which is either thus surreptitiously hurried through parliament, or which is passed in the presence of only a fraction of the House. To call such a measure a law is a mockery of the Constitution and a fraud upon the public. A learned constitutional writer well observes, that "though regularly it be true that forty members are sufficient to make a Commons House to begin prayers and businesses of lesser moment in the beginning of the day, till the other members come and the House be full, yet *forty were never in any parliament reputed a competent number to grant subsidies, pass or read bills, or debate or conclude matters of greatest moment*; which, by the constant rules and usage of parliament were never debated, concluded, passed, but in a free and full house, when all or most of the members were present; as the Parliament Rolls, Journals, *Modus tenendi Parliamentum*, &c. &c. abundantly prove beyond contradiction*." And Lord Coke tells us that "it is also the law and custom of the parliament that, when any new device is moved on the king's behalf in parliament for his aid, or the like, the Commons may answer that they tendered the king's estate and are ready to aid the same, only *in this new device they dare not agree without conference with their countries*† [*i. e.* without expressly referring back to their constituents]." These passages are entirely consistent with all the records before cited. It is clear that a real and careful consideration of every measure by the people and the

* A legal vindication of the liberties of England against illegal taxes and pretended acts of parliament, 1649, p. 9.

† 4 Inst. 14.

parliament is necessary to make any Act a lawful Act "by the common consent of all the realm." There is no difference in principle between levying money without asking the consent of parliament, and bringing on the question of such levying at a period of the day or session when the "common consent of all the realm" cannot be really asked or had. Each is equally acting an "illegal part, and plainly violating a known, established, and fundamental law of the land*."

It is common, no doubt, to attempt to excuse this open violation of the law by complaining of the vast deal of aimless talk that takes up so much time in the House of Commons to the delay of business. But the reason of this is, in truth, the vast quantity of aimless legislation which government brings forward, all ill-digested, ill-considered, ill-understood even by those who professedly introduce it; with rare exceptions empirical only, and without being based on any broad principle or with any reference to or respect for fundamental laws. If the attention of parliament were confined to objects really and legitimately within its sphere, and no measure were brought forward without being first really understood and properly digested, there would be no lack of time for getting through all necessary business with every proper caution and consideration. Such a state of things would, however, ill suit the purposes of a government which is striving more and more every day to shake off all responsibility to the people, and to reduce the functions of parliament itself altogether to a nullity. Under such circumstances some means must be considered of in-

* Lord Brougham's *Polit. Philos.* iii. p. 229.

ducing a more constant attendance of members of parliament to those duties which the continual violation of the fundamental laws of the realm by the executive are undoubtedly making more and more onerous.

The attendance of all members of parliament was formerly enforced under penalties*. Thus no measure could be passed nor any moneys be voted without that real assent which is necessary, by our fundamental laws, to every measure. If it is not thought wise to enforce, by penalties, this attendance, it might, at any rate, upon the principle which induced that law, be made necessary that a clear majority of all the members of the House should vote upon every proposition. It is clear that some such regulation as this is essential, unless the forms of Parliament are to become, avowedly, the mere instruments of executive usurpation. And another ancient law makes the obligatory attendance of members the more obviously just. It is certainly the case that no man can conscientiously ask the votes of constituents who does not intend to devote his time to the fulfilment of the duties which he thus so voluntarily undertakes. But our fathers, very properly, did not see why a member of parliament should be expected to give up all his time without remuneration, any more than any other responsible servant of the public. Work is expected from him. He ought to receive an adequate remuneration. Prynne, in the introduction to the fourth part of his 'Parliamentary Writs,' justly dwells on the importance, constitutionally, of the regular payment of wages to members of parliament; the revival

* See 5 Rich. II. stat. 2, cap. 4; and 4 Inst. 43.

of which payment "is likely," he says, "to prove the most effective means to prevent all undue, unworthy, abusive, profuse elections, and quicken all members to the diligent discharge of their duties." More than one statute is found upon the statute-book providing, with care and remarkable equity, for the levying and payment of the salaries of members. The curious as well as the constitutional reader may be referred, among others, to 23 Hen. VI. c. 11, and 35 Hen. VIII. c. 11.

The empirical mode in which modern acts of parliament are prepared has been alluded to. The subject is one of deep importance, but cannot be here dwelt on at any length*. No one can, however, have studied it without being painfully impressed with the disregard of any *principle* in their preparation; the loose and careless manner of their wording; and the reckless way in which any legislative tinkering is had recourse to. Instead of the modern statute-book being capable of being referred to as a means of learning what the law is, it is a mass of undigested, impracticable, contradictory matter and experimental crotchets, always without principle, often without any conceivable end or aim other than individual advantage or increase of government patronage. The fundamental laws which should be ever regarded as the definite Principles, as "the guide and rule to make acts by," are lost sight of. The consequences can be no other than we find them; and, till a very different system is adopted, no change for the better will take place.

* This has been dwelt on in my "Laws relating to Public Health." See Index to that work, "*Empirical Legislation*."

“The records of parliament,” Coke rightly tells us*, “are the truest histories.” We consult the ancient statute-book, and are filled with admiration and reverence for the stout-hearted and clear-headed men who had the guidance of the pen which wrote the most important part of it. But verily we shall figure badly if posterity judge of us by our, so-called, statute-book. We shall be esteemed to have been, in this age, not indeed a nation of shopkeepers, but a nation of hucksters. “Prudent antiquity could contain much matter in few words†.” The empirical intermeddling of modern times contains very little matter in a vast multiplicity of verbiage. Peddling detail instead of broad principle is the delight and, apparently, the only capacity of modern law-makers. Tinkering is always easier than setting to work to understand the mode of the original manufacture, and making fresh adaptations in accordance with some fundamental principle. It is easier to botch up, alter and “amend,” than to study the principle of a measure, thoroughly comprehend its origin and history, learn if, peradventure, the mere case and husk is all that now survives of that to which it related, and, if so, to remove it as a useless cumbrer. Often, the spirit, still surviving, is buried and lost sight of underneath a husk which once did cover, and so represent, a reality; but which, being composed of mere *accidents* instead of *essentials*, has in itself no actual vitality, though ignorant prejudice may have attracted round it the reverence which once attached, and was intended only to attach, to the reality it covered. In such case the true task of the legisla-

* 2 Inst. p. 536.

† 2 Inst. p. 535.

ture would be to remove the husk and rubbish, without in any way injuring the reality which it only now obscures ;—to make that reality visible to all, and so to fix attention and attachment upon it, and not upon that which time has changed from a true enclosing garment to an empty mock. This is a more laborious and a less showy task than that of the self-glorifying preacher of new experiment ;—but it is thus only that the securities of property or liberty can be preserved, or the realm kept free from the feverish discontent of some and the increasing want of confidence of many.

That statesman would be the greatest benefactor of his country who would make the carrying out of such a work the grand object of his administration. He would command the assent and aid of all the thinking part of the community, and confer an endless benefit upon his race. It is essential, however, to the useful fulfilling of this work, that the distinction be clearly seen, and constantly kept in sight, between statutes which are *Declaratory* and those which are *Experimental*. It has been shown, throughout these pages, that, from the time of William the Conqueror till that of Charles the First, those patriots and laboriously thinking men to whom we owe the preservation of our liberties had one weapon which they always used, and one weapon only : that weapon was DECLARATORY STATUTES. They dealt with principles and not with those details which, under institutions of local self-government, belong mostly to the people to fill out. They knew and felt that statutes are valuable chiefly for the IDEAS that they promulgate, and not for the detailed machinery which they dictate. They knew

that the best way to teach the people to use well their rights and liberties was for them to know them, and to have full opportunity for their free exercise. They had those rights and liberties, therefore, again and again declared in parliament, ordered to be read in churches and at the county court ; and whenever any violation of those rights and liberties was threatened, it was but the signal for insisting on another solemn recognition and redeclaration of them as the ancient rights and liberties which their fathers had inherited and handed down to them, and which they felt it their highest duty to hand down to us. It is the absence of those high motives which influenced them, the want of appreciation of those principles which they felt to be the only worthy ones, which has led, in our times, to the pursuing of a course so totally opposite to that which they pursued. The evil consequences cannot be magnified. The present result of such a course is the existing system of Government by Commissions, a system which our fathers rightly regarded with a religious horror, and strove, by every means in their power, to prevent ever gaining a footing in the land. They too well knew that, as such Commissions have ever been the chosen and most fitting instruments of despotism and arbitrary rule, their fastening on the land would be the inevitable precursor to the destruction of that RESPONSIBILITY of all entrusted with authority which it is the end of all our national institutions to secure ; and, by necessary consequence, to the reckless violation of all those Fundamental Laws and liberties and rights which they and their fathers had inherited, and which they had struggled with such energy to maintain untar-

nished for their own use, and to hand down unviolated to posterity. "IT IS NOT ALMOST CREDIBLE TO FORESEE," well says Lord Coke [4 Inst. 41], "WHEN ANY MAXIM OR FUNDAMENTAL LAW OF THIS REALM IS ALTERED WHAT DANGEROUS INCONVENIENCES DO FOLLOW."

CHAPTER III.

FUNDAMENTAL LAWS AND INSTITUTIONS RELATING TO
THE RIGHTS OF PERSON AND PROPERTY OF INDIVI-
DUALS, AS INDIVIDUALS.

“There are two ways of seeking and of finding truth. The one jumps from individual instances to sweeping conclusions; and, treating these at once as proved, applies them to all other cases. And this is the common way. The other obtains conclusions from examining individual instances also; but it is by going on from one to another, cautiously and step by step, so that not till all have been gone over are generalizations admitted. And this is the only true way;—but it is little used.”—Novum Organum Scientiarum, Aph. xix.

“... Presentment and trial by Jury,—the ancient BIRTHRIGHT of the subject.”—Coke, 4 Inst. 41.

It was shown at the beginning of the last chapter that the existence of some collective fundamental laws and institutions is an essential condition of every civil society and political union. As, without it, no political union could ever be permanent, so, without it, no development of the resources of individual energy, and so no human progress, ever could go on. Where uncertainty prevails as to permanence of property or security of person there can be no inducement, there is every check, to improvement and industry and effort. To supply the want of the hour will be all that any man will do. If the political quack and experimenter is dangerous to the permanence of national union, the legislative quack and

experimenter is fatal to individual prosperity. The rights of property must be fixed and certain, and their foundations able to be confidently relied on, before men will put forth those energies which, always looking to a future for their result, must have some guarantee that that result shall be ensured to those who venture on the enterprise, and that it shall not be interfered with by arbitrary caprice or speculative schemers.

The only way in which the rights of property and person can be felt to be inviolable is by the protection—as secured by fundamental law—of both of those classes of rights against being interfered with, under any circumstances, except by a defined course of proceeding. However imperfect the course thus prescribed, it is, if certain and definite, far better and less detrimental to the interests of society than the exposure to any procedure which is arbitrary and uncertain. It must be felt by all that, *except* under certain conditions, property and person are inviolable.

By such a test we have now to try the rights of property and person in England. We have to see whether any fundamental laws on this branch of our subject actually exist; what is their character; and whether, and how, these are violated by our modern rattle-and-lantern legislators, who are striving to obtain all arbitrary power over every species of property, public and private, under the cloak of “Commissions.”

In order to get any clear idea as to the perfection or imperfection, completeness or incompleteness, of any system of proceeding the object of which is to arrive at any absolute conclusions according to which

the rights of property and person shall in any case be affected, it is necessary first to have definite notions as to the difference between truth and untruth considered in themselves. Truth and untruth must always have reference to some form of existence. There must, moreover, be a truth and an untruth as to every object and every idea that has ever existed. There must be some way in which the difference between that truth and untruth may be detected.

Every process of true induction, or truth-seeking, must depend upon the exercise of three distinct but combined mental operations:—comparison of similitudes, or points of likeness or analogy; comparison of dissimilitudes, or points of disagreement; and, lastly, inferring a necessary connexion, or a disconnexion, between the existence of, and relations common to, the things or facts compared. For a man to be a sound reasoner and a reliable guide it is absolutely necessary that he should be possessed, by careful cultivation or extraordinary natural endowment, of a habit of mind which shall admit of no proposition or conclusion being adopted till each one of these mental operations has been carefully bestowed upon it. Most men are caught by analogies; on these frame theories—preconceptions, “*anticipations*,” as they are called by Bacon. With a false axiom thus obtained they view every fact subsequently seen, caught, in each, by its similitude, disregarding its dissimilitudes, and so never arrive at true “*interpretation*,” or the discovery of actual truth. Talk to such men of the very first principles of reasoning, of the primary axiom of that *necessary connexion* in which every created thing or fact in nature must necessarily stand to some other

thing or fact (and which true necessary connexion it is the one object of truth-seeking to discover), and they grow impatient. No wonder at it: the constant application of those principles must upset many a crotchet and many a favourite theory; for it follows as a corollary from the principles above indicated, that the existence of a single actual dissimilitude must negative any assumed law, generalization, or theory previously made upon observation of ever so many similitudes. Thus, had it been announced as a law that all transparent solids exhibit periodical colours, it would have been upset, and therefore proved false, by the discovery of a single case in which a transparent solid did not exhibit such colours. Again, though it had been observed a thousand times, and in a thousand different ways, that water decreases in dimension as heat is withdrawn, and that had been announced as a general law of nature and necessary connexion, yet the very first case in which it was observed that below 40° Fahr. an increase of dimension takes place, would have proved the above generalization to have been an “anticipation” merely.

No one can have engaged in the close investigation of any branch of inquiry, earnestly seeking the truth, and not have felt how easy it is, when once a particular idea has been taken up, to detect in every minute and barely distinguishable point imagined corroborations of that idea, while points inconsistent with the idea are overlooked; that, in short, in order to feel any confidence in the truth of any result worked out, or conclusion arrived at, it is necessary, at every step, to contend, as it were, against the evidence itself, and cautiously to seek out, not so much for that

which will support, as for that which will militate against, the conclusion which it is thought may be established. Thus only can it be known whether apparent similitudes are real and reliable similitudes, *essential* in the nature of the thing or fact observed, or only *accidental* to it: and thus also will it be found whether the apparent *dissimilitudes* are real dissimilitudes, essential in the nature of the thing or fact observed, or only accidentals, which happen to be the more prominent and so the first to strike the mind. If these can be separated from the essentials, and the latter are then found to bear characters of true similitude in the different things or facts compared, the conclusion, or truth got at,—the “interpretation,”—will only be the more confirmed by the very fact of the apparent dissimilitude having been fully and fairly grappled with, instead of having been shirked.

It will be immediately perceived that, according as one of the mental acts comprised within the true process of reflection is allowed more play (to speak in popular language) than another, so surely will error, instead of truth, be the result of any inquiry. A man who, in comparison of objects, is able to see only *similitudes*, will, at once, set down two facts between which any points of similitude exist (though those may be, really, mere accidents and not essentials) as referring to the *same* necessary connexion in the way of cause and effect: he never stops to search for discrepancies and dissimilitudes. We often hear of the confounding of the *post hoc* with the *propter hoc*. This is but one mode in which the tendency to see similitudes and overlook dissimilitudes is constantly exhibiting itself. This tendency, very common among the ma-

jority of mankind, and needing a careful training for the most cautious and conscientious man to avoid it, is the source of innumerable errors and evils in religion, morals, science, and matters of every-day opinion.

The universally popular mode, in ancient times and in modern, in works sacred and profane, of teaching by parable and fable, is but an illustration of this tendency to perceive similitudes and overlook dissimilitudes. In all such cases the accidental similitude is more seized upon by the mind than all the essential dissimilitudes, abounding as the latter necessarily do to a much greater extent. There is no danger of this employment of parables having other than a useful and illustrative result, because the listener is forewarned that he is being spoken to "*in parables.*" But in the ordinary course of searching after truth, in searching, in other words, to learn, by means of that which is known, that which is unknown,—the *cause*, or mode of necessary connexion of one fact or set of facts with another and their mutual relations, being desired to be known,—any accidental similitudes which may exist between different objects are readily seen, while all dissimilitudes are overlooked. A new idea is thus individualized in the mind, viz. that these different objects are similar in their relations to another object, or that two or more objects are related to each other as cause and effect. This new idea, thus formed in error, is taken as an axiomatic fact in seeking other truths; and, being compared by all, or probably again by only some, of the acts of reflection before named with other facts, hence other conclusions are formed in the mind, which again become

the foundation of other errors. It will at once be perceived that, at each step, the errors will become multiplied; the last error will be far greater than the first, and each step in the process accumulates error and the chance of error, in regular arithmetical proportion. The least attention will immediately make it clear that this is the natural history of every *speculation*, and *theory*, and *crotchet*, that ever existed in the world, in ancient times or in modern.

It will easily be seen that such an erroneous way of reasoning or inquiring, besides the individual errors produced, must give rise to a *habit of generalizing* from a very few facts;—which habit is totally destructive of all probability of ever reaching truth, except by accident. And it will be no less obvious, and it is no less important to observe, that the actual multitude of the facts accumulated is, in itself, no evidence whatever of the truth of the generalization in support of which they have been massed. It must first be shown that, at every step of the inquiry, in the formation of each one of the intermediate conclusions, *dissimilitudes* have been carefully sought and grappled with, and not only similitudes recorded. There is no fact or proposition, however absurd, which might not be supported by a long array of apparent similitudes. Ghosts, witchcraft, the sea-serpent, and numberless other ideas which at one time or another have filled the minds of men as realities, have been actually thus supported. The test must be whether, in each illustration brought up, the accidents have been separated from the essentials, the apparent similitudes distinguished from the real dissimilitudes, before the instance has been registered. Bacon well

says that "if every intellect of every age could assemble and labour in united and transmitted energy, but little progress could have been made in true knowledge by the method of *anticipation**"—that is, by marshalling, however industriously, similitudes and neglecting dissimilitudes. This consideration is very important. We are often met with the remark of the laborious care with which facts have been amassed and of the blue books which have been filled with them; and, in the face of these, denial of the conclusion put forth is accounted, by the superficial, to be presumption. A far more important question than the mere number of facts collected is, *the manner and spirit in which, and the object for which*, they have been collected. When there has been any "*anticipation*," the conclusions drawn must always be suspicious; where dissimilitudes have been unnoticed, or only slightly looked at, the conclusions can never be satisfactory. Many a man is perfectly *honest* in his belief in a theory, the absurdity of which is self-evident to all the rest of the world. He sees a few accidental similitudes. Instantly he jumps to a conclusion of some necessary connexion in the relations of the instances observed. All like cases, or similitudes, are eagerly caught at, while all dissimilitudes are unheeded,—really and truly unheeded, unseen; it is not by any means necessary to suppose them fraudulently concealed. Self-love is a great blind to the mental eye in such a case, and adds weight to every similitude which will support the favourite theory, while it hinders all sight of any dissimilitudes. Self-interest, under all the thousand forms it may

* Nov. Org., Aph. xxx.

assume, will always, even though, as often is the case, unconsciously, have the same effect*.

These remarks apply to every subject of investigation which can engage human attention. Whether it be a question of general science, of natural history, of human history, of legal investigation, of criminal jurisprudence, of social improvement, there is only one way by pursuing which the actual truth can be hoped to be got at. There is no topic which can be started which has not two sides to it, and which does not therefore need to have each side of it stripped of its accidentals, and considered only with reference to its essentials, before the real truth in regard to it can be reached. Hence it is that, though actuated by the best intentions in the world, no government can ever be safely carried on in a free country without the continual presence of an active opposition. Hence it is that no honest man can feel that any case, either of a civil or criminal nature, has been fairly adjudicated unless counsel has been engaged on both sides. There is a vulgar prejudice against what is called "party," as there is against what is called acting as a paid advocate. Each prejudice is traceable to the

* That it might not be supposed that the observations here made have any personal reference, or that they were framed to suit the special subject of this book, they have been copied almost entirely from remarks previously published by myself on the same subject. These occurred principally in the "Annals and Magazine of Natural History" for 1847 and 1848, and in two articles published in a foreign journal, in 1839 and 1840, in which the subject was considered at length. I have elsewhere also sought practically to illustrate the application of these views to widely-different classes of subjects. The canons of truth-seeking are of universal application.

same cause, and each indicates an equal inability to understand the essential distinctions betwixt truth and untruth. Every man (unless profoundly filled and penetrated with the conviction of the searching inquiry needed to get at the truth) fancies his own view of a case to be the correct one, and is impatient of opposition to it. When, as in political and many other matters, a number agree together in certain general points, they mutually support and strengthen each other in their opinions, and become the more impatient of any dispute or opposition. It is a relief to them to call every body who does dispute with or oppose them factious or ignorant, or other hard names ; and it is not recorded in history that any party ever hesitated to avail itself of this medium of relief. The sound men of every party will, however, desire the opposition, as the only way of sifting the truth thoroughly to the bottom. So in the case of retained counsel. The loser in every case finds a wonderful source of satisfaction in abusing the counsel of his opponent, as the upholder of a bad case, knowing it to be bad ; as the mercenary supporter of any side which pays him. And referring, as this matter does, to a state of things in which no case ever did or ever can come to trial without two directly opposite interests being at stake, the opportunity for reiterating these charges is perpetually present, and consequently the charge is stereotyped. Nothing can, however, be more absurd, or indicate either a more profound contempt of, or a greater blindness to, the essential characters of truth, than making such a charge. Until both sides of a question, the dissimilarities as well as the similitudes, have been fully and carefully consi-

dered, it is quite impossible to feel any reliable confidence in any conclusion arrived at. He who labours to detect the dissimilitudes does full as much towards working out that truth,—whatever may be the matter in question,—as he who only accumulates similitudes. It necessarily happens that, on each side in every cause, the statement of facts laid before counsel is *ex-parte* ; and, as each party collects up those facts most favourable to himself, each, in reality, masses similitudes only in relation to his own particular “anticipation.” The “anticipation” of one party being, necessarily, in direct antagonism with that of the other, those facts which are similitudes to one of these “anticipations” are dissimilitudes to the other. Hence the more energetically each side sets to work, the more *ex-parte* each separate collection of facts, it happens that, by the systems of procedure adopted in England, and by the retaining of skilled counsel on each side, there is the best possible *probability* of the truth being ultimately got at. This subject, on which so much ignorant prejudice exists and so much virtuous indignation is expended in this country, is mentioned here as a not unimportant illustration of the actual indistinctness of idea so widely prevalent as to the difference between the investigation of truth and the triumph of self-interested assumption. The stronger the popular prejudice, the more apparently conclusive the evidence, in any case, the more necessary is it that the other side should have full opportunity of exposing dissimilitudes ; and so either strengthen the general conclusion, or prove it to have been ignorantly and wrongfully taken up. He is no obstructor, but an enlightener, of the truth who gives

all the force of which they are capable to any apparent dissimilitudes which may exist.

It has been said that there are always two sides to every question. But there are often more than two sides. The more sides there are to a question the more necessary it is that every shade of similitude and also of dissimilitude shall be carefully considered. There are always the more sides to a question the more extensive are the interests involved. Hence is it the more necessary to have, on all such questions, many different minds employed upon the subject. Varying, as does the human mind, in the special activity of its various powers in every individual, a question submitted to the special consideration of several is infinitely more likely to be decided rightly than where submitted to one or two only. And this principle leads us at once to two of our most important fundamental institutions, one of which has been already noticed. It will be well briefly to allude to each of these in this special view, before proceeding to notice the fundamental laws relating to either.

The energy of mind and clearness of apprehension of our fathers is in nothing more strikingly seen than in the general direction of their arrangements as to all matters by which the rights of person and property could be affected. It is true that what we call superstition, but what they were taught was piety, led them to conceive that God would often specially interpose to adjudge the right in cases of human quarrel. But their strong good sense and clearness of apprehension led them, notwithstanding this, to the framing of a general system for the determination of the actual right in all such matters, most admirably and, indeed,

peculiarly adapted to the attainment of that end. The tendency of all their institutions in any way affecting property or person was in one direction,—namely, for submitting each question to the judgement of several indifferent parties, so that it might be considered from every point of view, instead of being decided by the arbitrary will or prejudice—what Coke calls “the uncertain and crooked cord of the discretion”—of one individual or a few having, or being liable to have, a prejudice or special interest in the matter. This characteristic may be traced through all their institutions, and was native to them. The special illustrations to which reference has been made are the institutions of *local self-government* and of *trial by jury*.

Attention has been already called to the importance and benefits of local self-government as a political institution. It is no less important as protective of individual rights, and, so, promotive of individual energies. Wherever local self-government prevails there is the best security which human institutions can afford that nothing will be done rashly or hastily, or on insufficient premises. The interests, immediate and direct, of all the body being concerned in every proposition, every possible dissimilitude is likely to be presented, as well as every similitude. Prejudice or self-conceit has less chance than under any other possible system. At the same time the energy of individuals will always have the opportunity of urging forward any suggestions the adoption of which may be for their own and for the common good. For a time a sluggishness may prevail, and an individual, or a few, have a predominating influence; but under a true system of local self-government such a circum-

stance can very rarely indeed happen; and it can never need more than a question of great interest to restore the healthy checks upon the over-influence of any mere theorist, mere similitude-marker.

It is another matter of great importance, that, under a system of local self-government, the actual true and the actual best must, of necessity, in the end prevail and be received. Human nature not being perfect, it will often happen that, however many minds are given to broad questions, error or prejudice will interfere to hinder the immediate reaching of the goal, although it is impossible that these can thus interfere so much as where the arbitrary will of one or a few are supreme. But mark the consequences. No sooner has any course been adopted, than, all being conscious of their rights as self-governors, and the rights and properties of every individual being affected, they are all fully awake to the actual results. The matter is discussed and rediscussed, and under every possible aspect of similitude and dissimilitude, and, in the end, the true goal is sure to be arrived at. Where every possible interest, and not one or two opposing interests only, is represented, as must always be the case in a true system of local self-government, it is equivalent to a determination by a strictly indifferent tribunal. The fuller and freer the opportunities of knowing and exercising the energies of each individual, in other words the more real and vital the system of local self-government, the sooner and the clearer will the truest and best interests of all be understood and felt. Theorists and idle schemers will have little chance, but a sound and good principle of truth is absolutely certain of ultimate success. Hence it is that local self-govern-

ment is always hateful to theorists and idle schemers, who come with their rattle and lantern and insist upon enlightening all the rest of the world whether they will or no. Their personal importance and vanity being involved in the maintenance of any position which may have been taken up, they are directly interested in *suppressing* every dissimilitude, and every search after dissimilitudes, by which it may be shown that they have erred, or that they have not followed the best course. Of such, Centralization is the only system which can command the admiration: to such, Crown-appointed Commissions are always the chosen, as they are the only fitting, instruments.

Trial by jury is another and most important form of the same principle. As much ignorance and prejudice probably prevail about this as about any other of our institutions. Venerated by many merely on account of its traditionary antiquity, it is more ignorantly sneered at by others of the Commission-school as cumbersome and antiquated. It will be well to consider its real nature.

In cases affecting the rights or wrongs of individuals in their individual capacity it would be impossible that the same machinery, however excellent, should be applied as is done in the case of a matter affecting a local district. In the latter case every person is interested in all sides of the question being examined: every separate interest is represented, and the more it is urged the more clearly are all dissimilitudes sure to be elicited, and so the attainment of the truth rendered more probable. All have the same general end in view, viz. the greatest good of all, though opinions differ as to the means of attaining it.

By so differing there is the less likelihood of any hasty or partial view being adopted. In the case of an individual claim the whole circumstances between the plaintiff and defendant are precisely the reverse. Their interests are directly adverse. It is the special interest of each to have only one point of view seized and declared to be the true one, and such point is always the exactly opposite to that which it is the interest of the other to procure to be admitted. There can be no such thing as a *majority* by which the weight of opinions may be tested. It was then a very ingenious idea (not sufficiently thought of) to let such a question be determined by a number of other persons, not interested personally in the facts in dispute, but who *were interested* in maintaining the peace and good order of the district, and who had the greatest likelihood of having the best knowledge of the facts, so as best to enable them to appreciate justly the various points of similitude or dissimilitude urged by the respective parties. Such is the general idea which the whole system of our fathers, as to both civil and criminal procedure, developes. Whether the case was heard before the whole gemote of their fellow-freeholders, or before a specially summoned gemote of twelve or more men of their hundred, or other limited district, the idea was the same. The most effectual means were thus taken of getting at the truth, by eliciting, through the different tendencies of so many minds, every possible shade of dissimilitude as well as of similitude in the array of facts presented, with what laboured care could be done, by each opposite party or his *ex-parte* advocate. There is no magic in the number twelve, and that number is not essential to

the idea of the system, nor does it represent the universal fact of its development in this country in either ancient or modern times.

There has lately been an extraordinary attempt made, among some other very untenable doctrines, to assign the origin of trial by jury to the Normans*. Nothing can be wider from the truth. This is not the place to enter, in detail, into the history of the origin of Trial by Jury. It may, however, be remarked that illustrations of the principle which forms the basis of what, under one of its shapes, is now called trial by jury are constantly found throughout the whole of the old Anglo-Saxon laws. If the idea of the *principle* is separated, as it ought to be, from that of a mere *form*, it is impossible for any one to study those laws without perceiving this to be the case. It is, moreover, an interesting circumstance, as showing the tendency of the institutions of all of the same kindred, that almost exactly the same even formal application of the principle which now prevails in England both as to the summoning and challenging of juries is known to have formed a part of the regular judicial system of the immediate kindred of our Saxon fathers during the period of the fullest development of what are called Anglo-Saxon Institutions in England, and when distinction of race or language was little more than a provincial one†. We do not happen to have any record in the same exact words in our own Anglo-Saxon laws, as we have not of many other matters known

* Creasy's Text-Book of the Constitution.

† Many illustrations of this might be cited. I content myself with referring to the very interesting and striking one contained in Conybeare's "Illustrations of Anglo-Saxon Poetry," p. xlii.

to have existed*. There can be little doubt, however, from the known prevalence of the *principle* in this country from a very early period, joined with the unquestioned fact that for many centuries even one *form* in which that principle has been developed here is so nearly similar to what is thus found in the remote and disconnected spot of Iceland†, that that form depended upon ideas older than the time at which the parent family of which Icelfander and Saxon were but offshoots sent those offshoots forth; and that, therefore, even that form was more or less fixed in this country at the remote period of early Anglo-Saxon rule. This, however, is a matter of little importance compared with the unquestionable existence of the *principle* of which this form is but one mode of the development.

It is painful to any lover of truth and well-wisher to human progress to hear the language of contempt and dissatisfaction which has lately not unfrequently been used in regard to the jury system. There will always be dissatisfaction in some quarters with any

* See Codex Diplomaticus Ævi Saxonici, vol. i. p. xlv.

† In the *Þingscaga-Pattr* of that valuable Code of ancient Icelandic Law, the Grágás, Capituli xxxvii., occurs the following remarkable passage, to which I add the Latin translation of the learned editors of the edition *Hafniæ*, 1829: "Goðar scolo þar dom nefna, oc skal hverr þeirra XII menn nefna i dom at döma, um sacir þær allar er þar coma i dom þann er þa scylda lög til. Hann skal bioða til sacar sökianda, oc sacar verianda at rengia þa menn or domi, oc emc buinn annan i at nefna, ef þessir verða or rengþir at lögum." Prætores in iudicium viros legant: quisque eorum unam denominet dodecadem, quæ causas omnes huic iudicio subjiendas et debito decidendas dijudicet. Actorem defensoremque causa [prætor] invitet ad reprobandos iudices, quos denominavit. Unoquoque horum legibus convenienter reprobato alium substituere paratus sum [inquiat].

system which gives a check to prejudice or to the course pursued by the executive. Such instances, in reality, are evidence of the value of the system and of the protection it affords to property and person, though, in the special cases, it may have run counter to party feeling or individual opinion.

It certainly can, however, be no matter of surprise that any one or any party that can attempt to justify the system of Commissions should be inclined to tamper with what remains to us of the jury system. Already, by the introduction and steady perseverance in that system of Commissions, has the jury system been most grievously tampered with, and the determination been shown to deprive the people of the protection which it affords against arbitrary government. It needs little now to the bringing in of some grand scheme of "Reform" which shall sweep away juries altogether, and supplant them by some "Three Whig gentlemen of agreeable politics and easy disposition, and also very thick with the Whig aristocracy," who will kindly adjudicate, without hearing it, on every case, civil and criminal, throughout the land, from a comfortable parlour at Whitehall or Somerset House. This may sound absurd, but it is not one whit more so than any one of the Commissions which have been appointed by this party since the passing of the Reform Bill. Those Commissions have indeed already carried the plan out to a very great extent. This completion of it will only be following out the principle and spirit of all those Commissions.

Men of slothful temperament are often heard to say that they would be better satisfied, in nine cases out of ten, with the judge's opinion than the jury's.

This may be easily understood. It is far less trouble to adopt the opinion of one man than it is to exert the mind to comprehend the shades of weight due to varied argument and to various forms of similitudes and dissimilitudes. It requires an equal energy to comprehend the process by which, as in a jury, this is done. But the judge's place is simply to interpret and declare the positive law as applicable to any given state of facts—never to express an opinion on those facts. Whatever his abilities, and however great his experience, the sphere in which he moves is one which least enables him to understand, and give due weight to, all the shades of motive which influence action in the classes between whom the greatest number of cases occur. While a jury is before him it is very possible that his opinion may often coincide with that of the jury; but how much of that fact is owing to the circumstance of a jury being before him, a continual check which requires him to exert all his powers to weigh well and carefully every shade of fact? His task would be far less irksome,—and far more liable to error,—were there no jury.

It is not intended to enter here into a full discussion of the benefits of Trial by Jury, or of the varying circumstances of society which may render some change in the details of the *machinery* useful, leaving the essential principle untouched. Besides the important consideration, however, of the principle of which it is an illustration being the only safe road to the attainment of the truth in matters of dispute, the trial by jury has many incidental and very important effects for good. *It has none for evil.* It is, like local self-

government, a most important *educator*. The dullest, when placed in the jury box, feels the necessity of calling into activity some exercise of the reasoning faculty. A vast variety of subjects comes under the attention of a jury, which increases their knowledge of their fellow-men, and tends to widen the sphere of their human sympathies and to lessen that narrow selfishness which is the bane of a contracted social circle. The very responsibility thrown on a juror, as a judge whose judgement shall affect the property, it may be the life, of a fellow-creature, is calculated to be of the very best influence, and to teach him self-respect, at the same time with that respect for the rights of his fellow-creatures which ought always to form a part of self-respect. There can be no system so well calculated to educate good and manly citizens as the jury system,—fully worked and with a due regard to the rights, duties, and interests of the jurors themselves,—combined with a real and effective system of local self-government.

The true meaning and value of the jury system, and, in one aspect, of the system of local self-government, having been thus briefly illustrated, we shall the more usefully proceed to the enumeration of those laws of England relating to the rights of person and property of individuals which may properly be called Fundamental Laws.

For this purpose it will be necessary to go again through the same venerable records as engaged attention in the last chapter. It will not, however, be necessary to dwell so long on any one of these as was there done, or to repeat the history of those solemn sanctions by which it was there shown that the inviola-

bility of those statutes had been endeavoured to be fortified. At the same time it is important to call attention to the fact, that those same solemn denunciations which imprecated the heaviest wrath of heaven on the violators of the general rights declared in those monuments of our fathers' unflinching attachment to their liberties and laws, extend to the provisions which will be cited in relation to the subject-matter of the present chapter. There is not one of those statutes which does not provide jealous guarantees for the security of property and person.

By the fundamental laws of England every possible precaution is taken against the person or property of any man becoming the victim, under any pretext whatsoever, of any arbitrary caprice or prejudice,—of any *ex parte* array of seeming similitudes. Especial care is taken that the king shall have *no power of instituting novel modes of procedure* which might, either directly or indirectly, affect the property or person of any man,—it having been always felt that, to entrust any such power to any one in authority, is the most sure means of making self-interest or prejudice triumph over truth, and that such a means can never be used but in opposition to the rights and liberties of the people. It is a remarkable spectacle to trace throughout our ancient statute-book how careful our fathers were that no wrong should be suffered through any arbitrary mode of accusation or of judgement,—that no one should be affected in property or person except “*per LEGALE judicium*”—by that judgement by due course of law—which could only be “*PARIUM SUORUM*,” by the judgement of his equals. The hurrying, restless spirit of modern charlatan legislation cannot under-

stand, and therefore despises, the protections thus afforded to person and property, the guarantees thus given for human progress. Individual crotchets and speculative theories will not bear submission to an impartial and indifferent tribunal. The aid of irresponsible and arbitrary Commissions is necessary to bring them into action.

It is not proposed to enter in detail here, any more than in treating of the other branch of the fundamental laws of England, on the provisions of the Saxon laws bearing on the subject. It is sufficient to say that, from the fragmentary remains of those laws which have come down to us, it is fully seen that the greatest care was taken to prevent either unjust accusation or hasty and arbitrary judgements*. It will be remembered that, as shown in the last chapter, all these laws were solemnly confirmed by William the First and his successors. The essential elements of the jury system are traced in numerous allusions in the Anglo-Saxon laws, and the principle is fully exhibited throughout the remarkable system of tithings, hundreds, &c. Nay, it was absolutely necessary that every man who sought to claim the benefit of the laws for himself should form one of what may properly be called a permanent jury, to be always ready in case of any charge made against any of his neighbours. It has been already seen (p. 62) that no case was to be brought before the king unless justice was conceived

* These points have been considered at some length in the author's "Considerations respecting the system of Anonymous Espionage and Search Warrants practised by the Commissioners of Excise as affecting the civil liberties of Englishmen," 1846; especially in the first edition of that work.

to have failed in the hundred or county. Every free-man was, under this system, tried by his peers in the fullest sense of the term ; and there can be no doubt that many more details were, in practice, filled up than those of which we find distinct record in the ancient laws. It is clear from Magna Charta,—a declaratory act only of the ancient rights inherited from the fathers of those noble-hearted men who drew it up,—that the precautions provided by the laws and institutions of the realm for the protection of the rights of person and property of individuals as individuals were very ample and stringent, however endeavoured, then as now, to be violated by those who had the power. To these provisions of Magna Charta attention shall, then, be next given.

By chap. 23 of Magna Charta it is provided that “ A free man shall not be amerced for a small offence, but according to the degree of the offence, and for a great offence in proportion to the heinousness of it, *saving to him his contenement** [certain principal necessities] ; and after the same manner a merchant saving to him his merchandize ; and a villain shall be amerced after the same manner, *saving to him his wainage* [also certain necessities], if he falls under our mercy [*i. e.* is convicted].” The peculiar spirit pervading this remarkable chapter, and not heretofore sufficiently regarded, should be noticed. It is marked by the greatest humanity, tempering justice with mercy. Whatever cause of punishment there might be against a man he was not to be deprived of the means of gaining his livelihood, for such is the meaning of the

* In the statute of Westminster I, 3 Edw. I. c. 6, it is expressed, what is here meant, “ saving his FREEHOLD.”

savings in each clause. And especial heed ought also to be given to the fact that this clause is not directed to provide or secure anything for the nobility,—who it is sometimes falsely alleged obtained Magna Charta for their own ends. On the other hand, it is specially directed to the protection of the middle and lower classes. It has been shown, in the last chapter, that Magna Charta was really the work of the commons as well as of the nobility. The interests of all were equally regarded.

But what is specially interesting in this 23rd chapter, and what serves to help the interpretation of many other passages in Magna Charta and other ancient statutes, is its last clause, which expressly recognizes and declares, as essential in every case, the intervention of a jury:—“*And none of the aforesaid amerciaments,*” it proceeds, “*shall be imposed* but by the oath of honest men of the neighbourhood.*” The same principle had already been indicated in a previous chapter (21st), in which the “holding” of the assizes of *novel disseisin*, &c. before the justiciaries and *four*

* This is usually printed “assessed,” the original, however, is “*nulla predictarum misericordiarum ponatur.*” It is obvious that the judgement, as well as the assessment, depended on the verdict of the jury of “honest” (*proborum*) men. It may be observed that in the Magna Charta of 9 Hen. III. these jurors are described as to be not only “*proborum*” (honest) men, but also “*legalium*” or *law-worth men*. It is further worthy of notice, as showing what motives actuated the framers of Magna Charta, that in the first stipulation (Articuli Mag. Ch.) there was no provision in reference to the Barons annexed to this chapter. It was a mere afterthought to add it in the engrossed statute, and there was even then no saving for them as in each other instance. It is evident that all the nobility were quite willing to put themselves on the one broad footing of simple freemen, together with the humblest freeman of the land.

knights chosen in every county by the people is provided for; and it is further provided that, if the regular county day were not sufficient for dispatch of business, “*so many of the knights and freeholders as have been present shall be appointed to decide them as shall be sufficient to make the judgements.*” It is clear that the presence of freeholders, as well as of the four knights sitting with the judges, or otherwise, was necessary in order to “make” any “judgement” in these cases. In so being, the same system was followed as in other cases where property was in peril.

It may not be amiss here to remark that the notion of the jury having been originally mere *witnesses*, as has lately been endeavoured to be made out by some writers, is clearly an erroneous one*. Even under the system of peace-pledge† the jurors were not supposed to be necessarily *witnesses*, but those who, from neighbourhood, were most likely to know something of the facts, as well as of the character of the accused, and who were the most interested in the preservation of peace. This subject cannot, of course, be discussed at length here. But the jury system, essentially as we now find it, must have been long at work when this remarkable provision was made that “*none of the aforesaid amerciements shall be imposed but by the oath of honest men of the neighbourhood.*” It needs indeed but a careful study of Magna Charta itself, and comparison of its various clauses, to understand the actual state in which the trial by jury at that time, and earlier, existed; a state precisely similar in prin-

* See Hallam, additional notes, p. 241, for a collection of the authorities supporting this notion.

† See pp. 121, 128, 145.

ciple, and most probably in detail, with that in which it exists at this day.

Chap. 27 is a very important one, and one deserving especial attention in relation to the subject of the present volume. The spirit and indeed the letter of it is openly and directly violated by every Crown-appointed Commission that was ever issued. "No sheriff, constable (of a castle), coroners, or other *our bailiffs* shall hold pleas of the crown." The person or property of no man shall, in any wise, be tried *before* any but those of known "learning and experience in the laws of the realm*"; by no means before self-interested theorists or Crown-appointed Commissioners; much less *by* the mere "uncertain and crooked cord of the discretion†" of such men.

We come now to the three glorious chapters of Magna Charta which enunciate, in a few simple sentences, the grandest and broadest ideas of human justice, and of the only means humanly attainable for getting at the truth. Comment can only weaken the simple dignity and everlasting truth of the principles embodied in the following sentences.

Ch. 42. "No bailiff [*i. e.* no justice of any class] shall, henceforth, put *any man* to law *upon his single accusation*, WITHOUT CREDIBLE WITNESSES PRODUCED TO PROVE IT."

Ch. 43. "No freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, OR ANY WAYS DESTROYED [*i. e.* affected in property or person], nor will we pass against him nor send against him [*i. e.* neither we nor any of our justices shall condemn him], UNLESS BY LAWFUL JUDGEMENT OF HIS

* 2 Inst. 30.

† 4 Inst. 41.

PEERS OR BY THE LAW OF THE LAND ;” that is, unless convicted by the judgement of his peers given according to the then ancient law, and then only in such damages or punishment as is by law appointed for each special case.

Ch. 44. “ We will sell to no man, we will not deny or delay to any man, right or justice.”

It should be observed here that the word “ freeman” in ch. 43, “ extends to villains, saving against their Lord; for they are free against all men, saving against their Lord*.” It was necessary in ch. 23, separately to specify the villain on account of the saving clause, the saving clause which applied to freemen not applying to villains, who, while villains, cannot be freeholders, and, unless mentioned specially in that clause, they would, therefore, have had no saving from entire ruin. In ch. 43 this was unnecessary. It is worthy of special notice, further, that in the first two of the chapters last cited the clearest distinction is drawn between the *witnesses* without whose evidence no man is to be put to law at all, and the jury of his peers, by whom the *judgement*, upon whatever evidence may be produced before them, is to be pronounced. *First*, it was necessary that there should be some substantial *evidence* before a man could be even charged; *second*, no man could be condemned except after *judgement* given against him by his peers, according to the ancient law of the realm; and after judgement so obtained he could only suffer that which the law allowed. Surely the distinction between the prohibition of the one thing without *witnesses* [*sine testibus*] and of the other without the *judicial consideration of his peers* [*nisi per*

* 2 Inst. 45.

judicium] is clear and very logical. It seems strange that, in the face of such consecutive clauses, any man should have succeeded in persuading himself that jurors were only witnesses,—in other words, that these two very specific clauses are only variations of the same idea, a ringing of the changes on the same provision ; a proposition which cannot certainly for a moment be sustained. The passages thus referred to and those before quoted throw mutual light upon each other.

To say that these three chapters are “ worth all the classics ” is to say little. They are worth all the volumes of jurisprudence and all the *Nova Organa* that ever were or will be written. They emphatically declare that no conclusion shall ever be formed affecting property or person, or anything else touching the rights and liberties of individuals, upon any array of *similitudes* only, but that every means must, in every case, be taken of having every side of the subject looked at, every dissimilitude examined ; while no factitious circumstances, necessarily or probably tending to induce an arbitrary conclusion, shall be permitted to interfere with this only legitimate course of truth-seeking.

There is one other clause of Magna Charta which must be quoted as an illustration of the complete manner in which, at that period, the principle of the jury system had penetrated every proceeding partaking in any way of the nature of a judicial investigation, and by which the rights of individuals were, or might be, affected. The chapter reads an important lesson to all who would pretend the necessity, in any case, of Crown-appointed Commissions, with their long array of Assistant-Commissioners, Inspectors, &c.

Chap. 52. "All bad customs of forests and warrens, foresters and warreners, sheriffs and their officers, banks and their keepers, shall forthwith be *inquired into in each shire, by twelve sworn knights of the same shire, who shall be chosen by the good men of the same shire,*" &c. And whenever the consideration of any matter was entertained by our fathers, by which property might in any way be affected, they did not allow themselves or the public to be imposed upon by any loud professions of *reform*, and to be so induced to treat with contempt the ancient and fundamental laws and institutions of the land by which the rights and properties of individuals were protected; but the intervention of a jury formed, as in the above instance, an essential preliminary. Very many illustrations might be cited. Thus it was in the Law of Sewers. The Commissioners of Sewers were not then permitted to usurp the powers which have been since assumed, and which, if abused by some of their late possessors, have been sought, eagerly and hungrily, to be obtained in a still more extended and arbitrary measure by those who have succeeded in supplanting them. By statute 6 Hen. VI. c. 5, the first act relating to sewers, and by all the other old acts on the same subject, the verdict of a jury was absolutely essential in each case before any step could be taken. Very inconvenient that to the broachers of novel schemes and crotchets of their own; and accordingly this important protection to the properties and pockets of the public is quietly dispensed with now-a-days. So, to give one or two other illustrations of the same always requisite mode of proceeding by the preliminary verdict of a jury, in the act 22 Hen. VIII. c. 5,

relating to decayed bridges, it was to be ascertained to whom the repairing of the bridge belonged by the same only constitutional method of inquiry*. Thus also, by 43 Eliz. c. 4, as to hospitals, commissions were assigned,—not, as modern commissions are, crown-appointed, and to impose their arbitrary will as law upon the land in every prejudged case which self-interest or meddling impertinence or morbid craving for change may cause to be represented as needing interference, but—“to *inquire* as well by the oaths of twelve lawful [*i. e.* free, *law-worth*] men or more of the county, as by all other good and lawful ways and means of all and singular such gifts and of the abuses,” &c.

These illustrations, which might be indefinitely extended, are very instructive, as showing how completely the jury system formed, and always has formed, a part of the fundamental laws and institutions of the realm; and how completely those fundamental laws and institutions are being openly violated by all authors and upholders of the modern Commission system.

It is unnecessary to repeat the notices given in the last chapter of the numerous solemn confirmations which Magna Charta, and all those important re-declarations of the fundamental laws of England which are contained in it, underwent. They should, however, be always present to the inquirer's mind. And it must not be imagined that the matters which have been cited from Magna Charta in the last chapter and in this are all that are worthy of note in it. On the contrary, every provision it contains is important, and

* See also Coke's comment hereon, 2 Inst. 703.

breathes a kindred spirit. In the changes which 650 years have seen, the direct importance of some special illustrations of the general principles laid down in Magna Charta, and which illustrations had a reference to certain then immediate ills, has become less felt. But the provisions which have been cited have, all of them, as living an interest and importance to us at this day as they had in the hour when the reluctant hand of John was compelled to affix his seal to that Declaration of the ancient and inherited Common Law of England. The principles embraced in those provisions can never lose anything of their interest to Englishmen until the blighting influence of Commissions has so overspread the land,—as most rapidly however it is doing,—that that total subversion of all free-institutions and of all spirit of enterprise and energy has been reached, which is their aim and will be their necessary consequence. It will then only add to the pang which shall be felt by the few who will dare, secretly and tremblingly, to think for themselves, to know that their ancestors, mid the stormiest times, and under the sway of the most powerful and successful of more than one warlike line of monarchs, succeeded in maintaining those rights and liberties and securities for property and person, the existence of which is wholly incompatible with that system of Commissions by which a *liberal* government has succeeded in superseding every ancient and fundamental law and institution of the land.

Passing over, then, the upwards of two-and-thirty solemn confirmations of Magna Charta, we find, in the reign of John's son Henry, an important recognition of a principle which at all times prevailed

through all Anglo-Saxon institutions, but the express recognition of which cannot, at the present time, and in reference to the subject of Commissions, be too strongly dwelt on. The principle alluded to is the *openness and publicity of all judicial proceedings*, a principle which, like every other protection provided by our fundamental laws and institutions, is directly violated by all crown-appointed Commissions. By the first chapter of the 52nd Hen. III., commonly called the Statute of Marlbridge, after express reference to late national commotions, and to infringements of the protection afforded by the ancient laws to person and property which had thence ensued, it is declared, "*That all persons, as well of high as of low estate, shall receive justice in the king's court.*" No comment is necessary on the noble sentiment here enunciated. It is the simple principle of English justice ;—the equality of all before the law, and that all, alike, must come into open court to ask it.

It will be remembered that, in every district, the gemote was the common meeting-place of every freeman of the district. It was, in the fullest sense, an *open court*. Abundance of illustrations might, were it necessary, be cited to show that the inquests and juries were always held in free and open gemote. The point however, so notorious and unquestionable, that it can only be necessary to remind the reader of chap. 21 of Magna Charta, already quoted ; and which alludes to the trials as taking place before the county gemote, and clearly considers it as a simple matter of course that there will be there present a great number of freeholders. The openness and publicity of every judicial proceeding has always been

considered an essential incident to the administration of justice in this country, and as affording one of the most important guarantees which property and person have that justice shall be done *according to law*.

It may be remarked that all courts in which justice is administered are properly called "*the king's courts*," the king representing the idea of the chief magistracy of the land. Remembering this, the full force of the following admirable observations of Lord Coke upon this chapter of the statute last-cited will be felt, and how entirely and justly the whole Commission system stands condemned before them. "These words," says he, "are of great importance; for all causes ought to be heard, ordered, and determined before the judges of the king's courts *openly in the king's courts, whither all persons may resort, and in no chambers or other private places*: for the judges are not judges of chambers, but of courts; *and therefore in open court where the parties' council or attorneys attend ought orders, rules, awards and judgements to be made and given, and not in chambers or other private places where a man may lose his cause or receive great prejudice or delay in his absence for want of defence**." It cannot be necessary to say a word as to the obvious application of this principle to every case whatever, either of inquiry or adjudication, in or by which person or property can be in any way, directly or indirectly, affected.

Giving attention, now, to the special modes in and by which alone the person or property of any man could be made liable to charge or claim, we find it declared in the statute of Westminster the first, (3 Edw. I.

* 2 Inst. 103.

c. 11) with reference to particular cases in which partial influences in the array of the jury had been suspected, "that such inquests shall be taken by lawful [more correctly *law-worth*,—that is, free] men chosen out by oath (of whom two at the least shall be knights), which by no affinity with the prisoners, nor otherwise, are to be suspected." The impartiality and indifference of the jury is over and over again declared to be absolutely essential in every case.

The 5th Edw. III. ch. 9 and 10, contains re-declarations of the fundamental law already seen to have been declared in Magna Charta and long before its time. Ch. 9. "It is enacted that no man from henceforth shall be attached by *any accusation*, nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seised into the king's hands, against the form of the Great Charter and the law of the land." Ch. 10. "It is accorded that if any juror in assizes, juries, or inquests take of the one party or of the other, and be thereof duly attainted, that hereafter he shall not be put in any assizes, juries or inquests, and nevertheless shall be commanded to prison and further ransomed at the king's will." If any doubt could have existed as to what was the form required for judgement and conviction by Magna Charta, these two connected chapters would show that the intervention of a "jury or inquest" was, in Edward the Third's time, not a century and a quarter after the Great Charter of John, well understood to be the meaning of the provisions laid down in that great charter.

Again, in 25 Edw. III. stat. 5. ch. 4, are contained important re-declarations of the fundamental law. The principles declared are identical with those de-

clared in Magna Charta and the earlier statutes. There are, as usual, slight variations in the terms employed, which enable us to understand the more fully what was and had ever been the admitted course of law, however much, as there has been frequent occasion to observe, it might at any time have been evaded or endeavoured to be subverted by the powerful and the unprincipled.

This enactment, which is entitled "None shall be condemned upon suggestion without lawful presentment," is as follows: "Whereas it is contained in the Great Charter of the franchises of England that none shall be imprisoned nor put out of his freehold, nor of his franchise nor free custom, unless it be by the law of the land; it is accorded, assented and stablished that from henceforth none shall be taken by petition or suggestion made to our lord the king or to his council, *unless it be by indictment or presentment of good and lawful [law-worth] people of the same neighbourhood* where such deed be done, *in due manner*, or by process made by writ original *at the Common Law*; nor that none be ousted of his franchises, nor of his freehold, unless he be duly brought to answer and forejudged of the same by *the course of the law*; and if any thing be done against the same it shall be redressed and holden for none."

This statute cannot fail to recall to mind that remarkable one still preserved in the Anglo-Saxon laws of King Ethelred (about A.D. 980), in which it is declared "that a gemote be held in every wapentake (or hundred) and the twelve senior thanes go out and the reeve with them, and swear on the relic that is given to them in hand that they will accuse no innocent

man nor conceal any guilty one*.” We have in each case alike the necessity declared for what is now termed a “grand jury;” which shall, in the first instance, ascertain and present whether there is such a *prima facie* case as warrants putting the accused upon his trial, according to the principle expressly also declared in the 42nd chapter of Magna Charta of John already cited. And it is hardly possible to pass over this subject without remarking on the too common want of familiarity with even ordinary legal proceedings which is shown by those who, as is often now done, argue for a criminal court of appeal on the ground that in civil cases a man may take his case before one jury after another, and that he should therefore not be prevented doing so in criminal cases. The fact is that, by the law of England, every criminal charge does go before two juries, the grand jury first and afterwards the petit jury. In addition to this the question has, in many cases, been previously tried before yet another jury—or inquest.

The same fundamental law is again enforced, with a slight variation in terms, in the 28th year of the same reign, chap. 3. “No man, of what estate or condition that he be, shall be put out of land or tene-ment, nor taken, nor imprisoned, nor disinherited, nor put to death, *without being brought to answer by due process of the law.*” In the 13th chapter of the same statute is another interesting illustration of the determination of our fathers to secure as far as possible indifference and impartiality in the jury, that so the danger of any rash or arbitrary conclusion, founded on similitudes only, should be avoided, and the full

* 1 Thorpe, 295. See also ib. 451. LL. Edw. Conf. ch. xx.

consideration of all dissimilitudes also be ensured. After declaring that “if a plea of debate be moved before the mayor of the staple” in certain mercantile transactions there named, “and thereupon, to try the truth thereof, an inquest or proof shall be taken; then, if both parties be aliens, it shall be tried by aliens, and if both parties be denizens it shall be tried by denizens, but, if the one party be denizen and the other party alien, half of the inquest or of the proof shall be of denizens and the other half of aliens.” It proceeds to declare “that *in all manner* of inquests and proofs which be to be taken or made amongst aliens and denizens, be they merchants or others, as well before the mayor of the staple as before any other justices or ministers, *although the king be party*, the one half of the inquest or proof shall be denizens, and the other half of aliens, if so many aliens and foreigners be in the town or place where such inquest or proof is to be taken, that be not parties nor with the parties in contracts, pleas, or other quarrels, whereof such inquests or proofs ought to be taken; and, if there be not so many aliens, then shall there be put in such inquests or proofs as many aliens as shall be found in the same towns or places, which be not thereto parties, nor with the parties as afore is said, and the remnant of denizens which be good men and not suspicious to the one party nor to the other.” It is impossible to help being struck by the determination here shown to avoid any possible circumstances which might even be supposed to give any bias. How different the course of those who, in the teeth of such declarations of the law, insult the common sense of the nation by pretending to appoint *Commissions of*

Inquiry, of which all the members are appointed by the Crown itself, which always takes care to be a "party" to the result !

Again, in the 34th Edw. III. ch. 4, it is enacted that "Because that the sheriffs and other ministers often do array their panels, in all manner of inquests, of people procured [*i.e.* having an interest in the result], and most far off from the counties, which have no knowledge of the deed whereof the inquest should be taken ; it is accorded that such panels shall be made of the next [nighest*] people which shall not be suspect nor procured." In the same statute is redeclared the penalty against any juror taking reward for his verdict. The importance of these securities for the impartiality and indifferency of the jury was so strongly felt that they were again and again emphatically declared. To cite even a small number of the instances of this would occupy more space than can be given. The reader shall merely be referred, by way of illustration, to 21 Edw. I. securing always responsible jurors, and thus such as might be best supposed not liable to be induced, by their needs, to take a bribe ; to 20 Edw. III. ch. 6, relating both to suspicion of jurors and of justices ; and to 42 Edw. III. ch. 11, by which it is declared necessary that the jury panel shall be returned, for view of all and any parties interested, at least four days before the assizes,—in reference, of course, to the possible necessity for challenging either the array or the polls of the jury panel so returned. By the

* Here as elsewhere I give the ordinary translation of the statute ; but, in order that the full force of the words should be understood it is necessary that some mistranslations, or words with a now altered meaning, should be thus corrected.

last statute it is further re-declared that, "in all manner of panels arrayed, shall be put the most substantial people and worthy of credit, and not suspect, *which have best knowledge of the truth, and be nearest.*"

It will be clearly seen from all these quotations that the idea of the jurors being "witnesses" is altogether a modern one; but it is an extremely dangerous one*. Witnesses are always, or with very rare exceptions, *ex-parte*; they come to support a similitude only, not to grapple with dissimilitudes, and so get at the truth. *Testimonium*, not *judicium*, is their peculiar office. But from the very earliest times the jurors were required, as has been seen, to be indifferent and impartial, neither "suspect" as to character nor with any bias. No man was to suffer except "*per judicium parium suorum.*" The importance is very great of having these points thoroughly understood at a time when the humiliating and dangerous notion has been broached in certain quarters (evidently from want of an insight into the true nature of a jury) that juries are useless and barbarous. For the better illustration of this matter one very specific, though brief, declaratory statute has been reserved till this place, though it would, in chronological series, have come before. In the year 1300,—the date is not unimportant,—and in the 28th Edw. I. ch. 9, *only eighty-four years after the Magna Charta of John*, the following declaration of the qualities necessary for a jury was solemnly promulgated,—forming part of a statute to which attention has been already called. "No sheriff nor bailiff shall impanel in inquests, nor in juries, over many persons, nor others, nor otherwise than it is ordained by statutes;"

* See before, p. 131.

—that is, by those ancient fundamental laws to which attention has been already called. “*And they shall put in those inquests and juries* such as be NEXT [nighest] NEIGHBOURS, MOST SUFFICIENT, and LEAST SUSPICIOUS; and he that otherwise doth, and is attainted therewith, shall pay unto the plaintiff his damages double and shall be grievously amerced unto the king.”

It may be well here to notice what was the difference between an “inquest” and a “jury” in the sense in which those two words are used in this last citation; and the use of both which terms together, and in the disjunctive, is conclusive as to the nature of the office which was discharged by each. An “inquest” is, in strictness, a matter of inquiry only, where, without any charge or even, necessarily, ground of charge against any person known or unknown, it is necessary for the ends of justice or the common weal that the truth should be got at as to some given state of things. The coroner’s inquest on view of a dead body is one illustration of this; an ordinary “writ of inquiry” to ascertain the amount of any debt is another. The statute 4 Ed. I., entitled “*extenta manerii*,” affords another illustration of the various purposes for which an “inquest” could be called. The “ward-inquests” in the City of London afford another well-known illustration. In the case of a “jury” there is some direct charge or claim made by one party against another, in respect to which both parties have put themselves upon the country; that is, submitted themselves to the determination and “*judgement*” of their countrymen and peers as to which of the two is right and which is wrong. The distinction between an *inquest* and a *jury* is then obvious; and it

is no less important, as an illustration of the lawful and regular and safe means which our ancestors employed to do that which is now illegally and irregularly done, and in a manner most dangerous to all the rights and liberties of person and property, by the modern system of Commissions of Inquiry. It will be immediately seen that the *principle* was the same in the case of both the inquest and the jury. The object in each case was to secure every probability of an impartial conclusion being arrived at, and all dissimilitudes as well as similitudes being well considered. It has already been remarked that it is this putting forth and embodying of great *principles* instead of petty details, as modern statutes do, that gives to the fundamental laws of our country that claim to our respect which they ought ever to command.

Sir Edward Coke well remarks in reference to the statute last cited, "If the purview of this act were well executed, then were the right institution of tryall by juries observed; for then every juror must have two *mosts* and one *least*, viz. most near, most sufficient, and least suspicious*." He must be *most near* because the fact of his nearness implies peculiar means of knowledge of the habits and character of both plaintiff and defendant, and of the general circumstances involved, in the case of a jury,—and of the subject matter of inquiry in the case of an inquest. Thus will he be the better prepared to weigh the full value either of every point of similitude or of dissimilitude which may be urged. He must be *most sufficient*, that is, most capable, most clear-headed, most prepared by previous knowledge of his subject, in

* 2 Inst. 561,

order that by ignorance or blindness he may not lose sight of essentials and be caught by accidentals, and so come to a false conclusion. He must be *least suspicious*, that is, he must be free from the possibility of personal bias. He must have no interest, either for hope or fear, in the result. He must have no favourite theory of his own to support, and must have no account of the discharge of his duty to give to any living man,—even “*although the king be party.*” Five centuries and a half ago our fathers explicitly declared these to be the only circumstances under which the truth could have any chance of being got at, whether in matters of mere *inquiry* or in matters touching the trial of a claim or charge. Those circumstances remain the same at this hour ; and must ever so remain unchanged while human nature shall endure. The laws of truth may be contemptuously trampled on, and the fundamental laws of the realm openly violated, by a system of packed Commissions of Inquiry and of packed administrative Commissions : but the principles which our fathers proclaimed and insisted on can never die ;—nor can a free people much longer submit to see them trampled on and violated.

The fundamental laws and institutions of England in respect to the only course of proceedings by which the property or person of any man shall be in any wise affected will have been sufficiently established by the citations which have been already made, beginning from the earliest times, and all marked by certain fixed unvarying principles. The illustrations of the redeclaration of those principles as fundamental laws might have been almost indefinitely extended. But we may now most usefully pass on to the Petition of

Right, in which those principles are clearly and emphatically re-asserted.

Among other matters in the Petition of Right it is declared, that “Whereas also by the statute called the Great Charter of the Liberties of England it is declared and enacted that no freeman may be taken or imprisoned, or be disseised of his freehold or liberties or his free custom, or be outlawed or exiled, *or in any manner destroyed* [injuriously affected in property or person], but by the lawful judgement of his peers or by the law of the land: And in the eight and twentieth year of the reign of King Edward the Third it was declared and enacted by authority of parliament that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death, without being brought to answer by due process of law.” The statute goes on to state certain infringements of these provisions; and then recites other similar fundamental laws, and their infringement by certain *Commissions* before that time issued under the great seal, and “by which certain persons had been assigned and appointed commissioners, with power and authority to proceed within the land according to the justice of martial law against such soldiers or mariners or other dissolute persons joining with them as should commit any murther, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever; and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.” The statute proceeds to enumerate many of the indirect as well as direct

evils which must result from such a system, and ends this branch with solemnly declaring that all such “Commissions, and *all others of like nature*, are *wholly and directly contrary to the said laws and statutes of this your realm.*” The statute then goes on to declare that thereafter “*no commission of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your majesty’s subjects be DESTROYED* [injuriously affected in any way in property or person*] *or put to death contrary to the laws and franchises of the land: all which,*” though thus anew declared, this Petition proceeds to claim “*as their rights and liberties according to the laws and statutes of this realm.*”

It is very important that the reader should clearly understand the meaning of this statute. Its real purport and intention are plain. A particular set of commissions only is therein specially named; such an extensive violation of the fundamental laws of the realm as is now openly committed not having been then attempted. But the recitals in the statute show its intent. It was an accident that the illustration then present was a commission touching the crimes of mariners and soldiers;—a commission, by the way, certainly no more illegal or oppressive than many which now exist, and not nearly so dangerous to the general interests of society. It was not a *general* commission,—but one which affected those who were guilty of murder, robbery, felony, mutiny, or other gross outrage, and who were also soldiers, mariners,

* “*Every oppression against law by colour of any usurped authority is a kind of destruction.*” 2 Inst. 48. It is important to remember that Coke himself had a principal hand in drawing this very Petition of Right.

or other dissolute persons joining with them. Far more extensive commissions exist in full activity at this day*. This particular one would indeed be considered by many at the present day as a highly beneficial one, and they would sneer at the factious opposition of any one who should resist it. Our fathers thought differently. They opposed it, not for any *accidents* pertaining to it in particular, but for the essential qualities common to it with all other Crown-appointed Commissions; as *a power assumed and exercised by the crown to take steps affecting the properties or persons of individuals without the lawful and necessary presentment of a jury in the first place; and to adjudicate without a trial of each case by a jury indifferent and impartial between the parties, and liable to challenge.* It was this that made such commissions “*wholly and directly contrary to the laws and statutes of the realm.*” And in every one of these qualities every existing Crown-appointed Commission, or other Commission whose constitution does not make it equivalent to a jury, resembles those commissions thus denounced in the Petition of Right. The authors of that Petition of Right, careful that there should be no mistake, and that the individual should not be thought to have been meant without reference to the general, that the accidental should not be supposed to have been mistaken for the essential, expressly say, “*which commissions AND ALL OTHERS OF LIKE NATURE are wholly and directly contrary to the said laws and statutes of this your realm.*” All are included in this

* I purposely omit any allusion to the mode of trial by Court Martial which actually does now prevail, and under which so many have cruelly suffered for the most trifling offences in time of peace.

solemn denunciation, which, like the one particularly specified, violate that fundamental principle of the constitution and fundamental law of the realm, that no man shall “be taken or imprisoned, *or* be disseised of his freehold or liberties, *or* his free customs, *or* be outlawed or exiled, *or in any manner destroyed*, but by the lawful judgement of his peers or by the law of the land.”

And in the Star Chamber abolition act* the same recitals are contained. It was because the Star Chamber, which was nothing but a Crown-appointed Commission under that name, had been, as is in that act declared, “found to be an *intolerable burthen* to the subjects and the *means to introduce an arbitrary power and government*,” that it was declared to be for ever abolished, and, further, that “from thenceforth NO COURT, COUNCIL, OR PLACE OF JUDICATURE SHALL BE ERECTED, ORDAINED, CONSTITUTED OR APPOINTED WITHIN THIS REALM of England or dominion of Wales WHICH SHALL HAVE, USE, OR EXERCISE *the same*, OR THE LIKE, *jurisdiction* as is or hath been used, practised or exercised in the said court of Star Chamber,”—a provision which is merely re-declaratory of those which have already been cited from Magna Charta (p. 132). But this statute, guided by the same principle, and the more strongly to enforce the same idea, further specially declares “that NEITHER HIS MAJESTY NOR HIS PRIVY COUNCIL HAVE OR OUGHT TO HAVE ANY JURISDICTION, POWER OR AUTHORITY *by English bill, petition, articles, libel, or ANY OTHER ARBITRARY WAY WHATSOEVER*, TO EXAMINE *or draw into question, determine, or dispose of the lands, tenements, hereditaments, goods or chattels*

* 16 Car. I. cap. 10.

of any of the subjects of this kingdom, but that the same ought to be tried and determined in the ordinary courts of justice and by the ordinary course of the law ;” and the heaviest penalties are declared against any privy councillor or other who shall offend against that statute. It is in open and flagrant violation of this statute, and of the Petition of Right, and of every statute therein directly or indirectly recited or referred to, that not only does the Privy Council assume to itself even far higher powers than those of a merely judicial nature, as will hereafter be seen, but that Commissions are being daily issued, and already have spread themselves over every corner of the land, claiming and asserting “jurisdiction, power, and authority,” in a purely arbitrary way, “to examine and draw into question, determine and dispose of, the lands, tenements, hereditaments, goods and chattels of [most truly] *any* of the subjects of this kingdom.”

The statute, passed in the same year, for abolishing the Court of High Commission breathes exactly the same spirit, and is pointed against identically the same vicious principle. By that act also it is declared that “*no new court shall be erected, ordained or appointed within this realm of England or dominion of Wales, which shall or may have the like power, jurisdiction, or authority as the said High Commission Court now hath or pretendeth to have ; but that all and every such letters patent, commissions, and grants made or to be made by his majesty, his heirs or successors, and all powers and authorities granted, or pretended, or mentioned to be granted thereby, and all acts, sentences, and decrees to be made by virtue or colour thereof shall be utterly void and of none effect.*”

It is probable that those who first suggested, or agreed to, the proposition for the Commissions called the Court of the Star Chamber and the Court of High Commission, thought those Commissions would be useful, and intended them to be so. This we may honestly believe, as we may also believe the same of many of those who have suggested and supported many modern Commissions no less calculated, or rather certain, "to introduce an arbitrary power and government." The present is not a question of motives. It is sufficient that all such Commissions, whatever their names or the objects to which they are directed, have, under crown nomination, the same necessary tendency and certain result of "introducing an arbitrary power and government." They all equally deprive Englishmen of those rights and liberties and securities for property and person which are declared in Magna Charta to be their birthright, and which have been re-declared and emphatically sanctioned by every fundamental law of the realm since passed at every critical period of English history.

Among the protests of wrong contained in the Bill of Rights is one as to the issuing of a Crown-appointed Commission: and among its declarations of the "undoubted rights and liberties" of the people which are to be "claimed, demanded and insisted on," is this; "that the Commission for erecting the late Court of Commissioners for ecclesiastical causes, AND ALL OTHER COMMISSIONS AND COURTS OF LIKE NATURE, ARE ILLEGAL AND PERNICIOUS." That is, all Commissions which are Crown-appointed, and which have recourse to any other machinery whatever than the principle of the Jury system. Thus does the Bill of

Rights entirely agree with Lord Coke, who, in enumerating the three things which, "*having fair pretences, are most commonly hurtful to the Commonwealth,*" puts, as the first and chiefest, "*New Courts [or Commissions], for commonly they tend to the grievous vexation and oppression of the subject, and not to that glorious end that at the first was pretended*.*"

There is one point incident to the jury system which, though an essential part of it, has as yet been only once incidentally mentioned. This is the right of *Challenge*. From the earliest period this right has unquestionably been an essential incident of the jury system. Yet it is seldom directly alluded to, and the time may be anticipated when its very existence shall be denied†. The careful reader will, however, have perceived that the actual exercise of this right is necessarily implied in many of the statutes which have been cited. Thus the statutes requiring impartiality would be of no meaning unless the right of challenge existed and was in the habit of being exercised at the time of the passing of those statutes. To place the matter beyond a doubt, however, we fortunately find a statute‡ passed within less than a century after the Magna Charta of John, in which the challenge of the jury is expressly mentioned, and that in very remarkable terms,—terms which strikingly show what the true character of the jury was, and

* 2 Inst. 540.

† Like other institutions which have been denied, there is no doubt that the want of mention of this is to be ascribed to the fact of its being "so inherent as not to require particularization." See Codex Diplomaticus Ævi Saxonici, vol. i. p. xlv.

‡ See the Icelandic law as to Challenge, already cited, p. 123.

how different from what some modern theorists would make it out to be. They show, moreover, how stringently the law of indifferency and impartiality was insisted on, and that the Crown was allowed none of those privileges now monstrously set up in derogation of the liberty of the subject, but that it was, on the contrary, required to submit to especial restrictions. The 33rd Edw. I. st. 4 (A.D. 1305), is as follows:—"Of inquests to be taken before any of the justices, and wherein our lord the king is party, howsoever it be; it is agreed and ordained by the king and all his council, that from henceforth, *notwithstanding it be alleged* by them that sue *for the king* that the jurors of those inquests, or some of them, be *not indifferent for the king*, yet such inquests shall not remain untaken for that cause; but, if they that sue for the king will challenge any of those jurors, *they shall assign of their challenge a cause certain*, and the truth of the same challenge shall be inquired of *according to the custom of the court*: and let it be recovered to the takers of the same inquisitions as it shall be found, if the challenges be true or not, after the discretion of the judges."

Thus by this law, passed in the reign of that powerful monarch Edward the First, no peremptory challenge could be made by or on behalf of the crown. It is also clear, from the allusion in this statute to the "custom of the court," that the challenge of jurymen was then a matter of common right and use.

It is unnecessary to enter at any length into the law relating to the challenging of juries*. It is suf-

* On the grounds and general subject of challenge the reader may be referred to 1 Inst. (Coke on Littleton), 155, &c.

ficiently well known that such challenge may be either to the *Array*, that is, to the whole jury summoned and the manner of its being summoned ; or to the *Polls*, that is, to any individual on a well-summoned jury who is liable to any suspicion of unindifferency. By the first the party is protected against any packed, or fraudulently or illegally-summoned jury ; by the second, against the malice, bias, or interest of any single jurymen affecting his perception of similitudes and dissimilitudes, and so influencing the judgement of the whole. This right of challenge is, as has been said, an absolutely essential part of the jury system, and it affords a most important protection to the rights and liberties both of property and person of every Englishman. Deprive the institution of the jury system of this essential characteristic and it sinks into a mere form ; becomes but a covert instrument of confiscation. Attention should be particularly fixed upon the fact that the great reason why Commissions, whether Commissions of Inquiry or Administrative Commissions, are always the chosen instruments of schemers and of the enemies of the public liberty, is, because *it is the essential nature of Commissions to avoid every one of those qualities and liabilities, to secure which is the one essential object of the jury system.* For its being packed, for its being unindifferent, for its incapacity, for its having any interest, direct or indirect, in the result, a jury is liable to absolute and unevadable challenge. Commissions are, as an essential element of their constitution, packed ; there can therefore never be any security whatever for either their unindifferency, or their capacity ; and they will generally have, of necessity, a direct interest in one mode of

adjudication rather than another. *But however gross and notorious their incapacity, unindifferency or self-interest, there can be no challenge either to the array or to the polls. They are the purely arbitrary instruments of irresponsible and despotic power.*

It can hardly be necessary to remind the reader, that all the requisites of a jury which have been considered in these pages imply, as a matter of course, the hearing of *both sides*, and the possession of full powers to enforce the attendance of any witness and the production of any documents, and to appeal to the highest sanctions by which false witness may be prevented. Such requisites have been, from the earliest times, treated as the only groundwork upon which the jury has to make, or can make, its judgement. It is equally clear that the presentment, right of challenge, &c., all imply, in themselves, full notice of every claim and charge and full opportunity of answer, so that no man may be condemned unheard, or on *ex-parte* evidence. Detailed illustration of any of these points cannot be required.

It has been shown, then, that, by the fundamental laws and institutions of this country, the rights and liberties of every individual, both as to person and property, are secured by the following protections :— 1st, that *the crown can create no new courts, Commissions or offices, of any sort or kind whatsoever, for the trial of offences, or by whose determinations person or property can be in any way affected* ; 2nd, that *no charge or question can be raised affecting property or person, on the mere motion of any justice or person in authority, nor unless supported by the testimony of credible, and therefore known and responsible, witnesses* ; 3rd, that

no inquiry or adjudication by which either person or property can be in any way affected can be made except in open court, whither all persons may resort, and in no chambers or other private places ; 4th, that no INQUIRY can be made affecting property or person, nor can any ADJUDICATION be made on any charge or claim of any nature or kind soever, except by a jury of the peers of the party whose property or person is or may be affected, or against whom any claim or charge has been made ; to which jury is inherent the power to compel the attendance of all necessary witnesses, and the production of all necessary documents, and to enforce both under the most solemn sanctions against false witness ; and of which jury the following are essential requisites : —that its members shall have most knowledge or probable knowledge of the matter in question, the most ability, and be altogether indifferent between the parties ; that so such jury may a true judgement give after hearing all the evidence, and, if it be a case of claim or charge, after hearing both sides and the witnesses of each if any be produced ; 5th, that, for the securing these latter requisites, every man has the right of challenge to the jury, either to the array or to the polls.

Comment on the importance of these protections, and on the security they must afford for property and person, and therefore the important aids they are to human progress, can be needless. It will presently be seen how every one of them is openly violated and trampled on by the system of Commissions.

Thus have been reviewed the main principles of those fundamental laws and institutions which are the Birthright and Inheritance of Englishmen. They

provide as well against the engrossing of any arbitrary power of *general control* in the hands of any individual or number, and against the assumption of any general power to act or ordain otherwise than as the will of the people shall give sanction, as against danger of *private wrong and outrage* to any individual. Private rights as well as public rights are most jealously guarded. One idea, one principle, will be perceived by the philosophical inquirer to lie at the bottom of the whole system,—the idea and principle of fundamental truth and justice. The rights and interests of the public are not to be sacrificed or subjected to the interests or caprices of any one man or set of men. The *whole community* is not to be affected or controlled without the previous knowledge and assent of the whole; which latter, for convenience sake, must be given by representation. No *single district* is to be *specially affected* but by the previous knowledge and assent of its own inhabitants, who alone—and *not the mere representatives of all the districts of the empire*, still less any one or more persons nominated by the executive—can have any true knowledge of the similitudes and dissimilitudes of the case. No *single person* is to be affected but after an examination of definite and specific facts by those having every best opportunity of understanding and appreciating those facts under every form and aspect, and of weighing their value impartially. There is a grandeur and a beauty in the very simplicity and oneness of the elements to which we may thus reduce all the fundamental laws and institutions which have endured for upwards of a thousand years in England. UNITY is the great mark of every Truth.

It is to the constant watchfulness and care of our fathers that we owe that state of society, that progress and civilization, which now mark this country. It is to that constant watchfulness and care that we owe it that laws and institutions have been handed down to us which have saved us from those scenes of revolution and disorganization of society which continental nations have, during the past year, exhibited. Those very laws and institutions are the ones against which the ceaseless efforts of the authors and upholders of the system of Commissions are directed. Are progress, and those securities of person and of property which are necessary to it, of such little value that no effort shall be made to resist these insidious attacks upon all that has hitherto made the name of Englishmen respectable and respected? We need in England no new Constitution, no new edition of the Rights of Man. Our fathers a thousand years ago had inherited those liberties and rights for which continental nations are to-day struggling, and struggling in savage agony. It needs but for us to resist, as our fathers did, all attempts at encroachment, and to require the re-declaration of those rights and liberties whenever a violation is attempted, in order that our children may receive from us the same birthright and inheritance which our fathers held as their most choice possession.

So much has already been done in this country towards the subversion of those fundamental laws and institutions which have been thus reviewed, that an active and earnest effort is needed to remove the mischief that has been actually done. But that effort cannot be made in vain: the object is no indistinct

and vague one ; it is peculiarly definite and clear. If, like our fathers before us, we “claim, demand, and insist upon” all those “undoubted rights and liberties” which they and their fathers obliged kings and courts and the authors of Commissions to bow before, and to admit and swear observance of, as “the birth-right of the people,” and as the freedom which Englishmen had “inherited,” we have, in the fundamental laws and institutions in which those rights and liberties are embodied, guarantees for human progress far higher and stronger than any closet-drawn constitution can supply.

One of the most profound of German writers has justly remarked of the system of centralizing law which has prevailed so much on the continent of Europe, that “the prevalence of the Roman law has brought no advantage to our [*i. e.* the German] constitution and our freedom. England, Sweden, Norway and other lands which have not been thus exposed to it, while they are no less advanced in mental development than ourselves, assuredly owe many very valuable advantages of political condition *to the preservation of their ancient laws*. In the interior of Germany, the agricultural classes, who can no longer look back to their ancient customs, have become stolid ; their ideas are dwarfed, and they take little interest in the commonweal*.” And it is to such a state that the Commission system is striving to bring England and Englishmen. To tie up all to the tether of the leading-strings which Commissions shall hold is the ceaseless endeavour of the party and the individuals who plan and execute those Commissions. What the result is when

* Jacob Grimm, “*Deutsche Rechts Alterthümer*,” pp. xvi. xvii.

—those leading-strings once burst—unbridled fury and just indignation is poured upon the upholders of, and the actors in, those Commissions, the past year has shown to Europe and the world both in Germany and France. Such scenes are the inevitable, the absolutely certain, result of such a system. For any such scenes, for any approach to them, in England, the authors and upholders of the Commission system are immediately responsible, and will have a great account to render to those whom they mislead and deceive, by going about, under the false banner of “liberalism” and “reform,” to trample on and destroy those fundamental laws and institutions which alone have ever constituted, which alone can constitute, the safety, the reliance, and the hope of Englishmen as individuals, and of England as a nation.

Well may it suit the designs of the authors and upholders of the Commission system to sneer at the laws and institutions of our Saxon fathers,—for those laws and institutions stand a solemn record to all time, a rebuke alike to those who impiously would violate them and to those who would tamely submit to such violation. No opportunity is lost by the authors and upholders of the Commission system to sneer at those laws and institutions, or to deny their existence. To the people of England it is of the highest importance to bear in mind at all times, not only their reality, but their warm vitality. Both these it has been the object of the two foregoing chapters to point out and place beyond a question. The ignorant arrogance of Procrustean schemers may, in its hardness, and in order to forward the design of imposing new Commissions on the land, assert that our funda-

mental laws and institutions are things “of yesterday*” and not of Anglo-Saxon origin. But Englishmen must not be permitted to be defrauded of their “noblest inheritance and best birthright” by bold assertion and self-interested perversion of the truth. And this attempt to give a collective sketch of what the most precious of those ancient and ever-fundamental laws and institutions are, cannot be concluded better than with the words of a learned scholar, who, after giving to the world the original records of the Anglo-Saxon witenagemotes for many centuries, declares†, “More than fifteen hundred documents have survived the conquests and trappings of armies, the storm of revolutions, the yet more efficient and gradual changes of fashion, and the altered forms of public and private life. They have survived not only to show us what our forefathers thought and did, but to prove the marvellous resemblance which, in spite of every influence, we, their late descendants, bear to our forefathers. *Let us be assured that the Englishman has inherited the noblest and best portion of his being from the Anglo-Saxon*: and, by a rare good fortune, he has the means of comparing his actual condition with that which lay at its remote foundation.”

* See the author's “Letter to the Metropolitan Sanatory Commissioners, containing an examination of allegations put forth in support of the proposition for superseding, under the name of sanatory improvement, all local representative self-government by a system of centralized patronage.” S. Sweet, 1848: p. 12. (2nd ed.)

† Codex Diplomat. Ævi Saxonici, vol. vi. p. vi.

BOOK II.

ILLUSTRATIONS.

CHAPTER I.

OF COMMISSIONS OF INQUIRY.

“Commissions of new inquiries, or of novel invention, are AGAINST LAW, and ought not to be put in execution.”—Coke, 2 Inst. 165.

“A PEOPLE,” says Mr. Mill, in his ‘Principles of Political Economy,’ “who look habitually to their government to command or prompt them in all matters of joint concern, who expect to have everything done for them except what can be made an affair of habit or routine, *have their faculties only half developed.*” And, again, he says, “To be prevented from doing what one is inclined to, or from acting according to one’s own judgement of what is desirable, is not only always irksome, but always tends, *pro tanto, to starve the development of some portion of the bodily or mental faculties*, either sensitive or active; and, unless the conscience of the individual goes freely with the legal restraint, it partakes, either in a great or in a small degree, of the *degradation of slavery**.” And yet again the same writer says: “There never was more necessity [than at this time] for surrounding *individual independence of thought, speech and conduct* with the most powerful defences; in order to maintain that

* Vol. ii. p. 507.

originality of mind and individuality of character *which are the only source of any real progress, and of most of the qualities which make the human race much superior to any herd of animals**."

In the former part of this work have been shown the watchful guarantees which have been provided by the Fundamental Laws and Institutions of England for the full development and healthy growth of all individual, local, and national energies ; for preserving the nation from the degradation of slavery ; and for encouraging independence of thought, speech, and conduct. We have now to notice some special illustrations of the ceaseless, anxious, systematic efforts of the present government of this country to "starve the development of the bodily and mental faculties" of the whole people ; to keep "their faculties only half developed ;" to reduce them to the "degradation of slavery ;" to bring them down to that state of humiliating pupilage and mere unreasoning submissiveness in which they shall be but as "any herd of animals."

The reader who has any knowledge of the constitution or working of any government Commissions will need no illustration to be placed before him for him to see at once that all those Commissions, of every kind, are in diametrical opposition to, and violation of, every fundamental law and institution of the land ; that, in the fullest sense, they are "illegal and pernicious." As, however, there will be some whose attention has not happened to be called to the constitution and working of those Commissions, it seems desirable that a few illustrations should be placed

* Vol. ii. p. 509.

before them ; that, so, they may more thoroughly understand—and, understanding, raise their voices against—that most degrading and pernicious system which is every day spreading its evil influence more widely across the land. It is with things and not with words that we are dealing. It is, therefore, essential to have a clear understanding what those things are.

The reader must be again reminded that it is not, simply and abstractedly, because these Commissions are a violation of certain laws of the land that they are pronounced to be illegal and pernicious. Nicely phrased ordinances might have been promulgated within a month past with every pomp and ceremony as fundamental laws. But that promulgation could not constitute them such ; nor would any violation of laws so promulgated, though positively illegal, necessarily be pernicious. Nor, on the other hand, are these violations protested against simply because the laws and institutions which they violate are of untold antiquity. The aim of the foregoing pages has been to show to the unbiassed mind of every honest man that the laws and institutions which are thus violated are not arbitrary and capricious, but that they have their foundations laid in the noblest principles of human nature, of progress, and of truth. It is because their foundations are there laid that it has been felt to be a work of the utmost importance to show, truly, what their structure is. Their far antiquity is not the ground of the reverence due to them. But their far antiquity, their endurance unchanged through the roll of many centuries, still adaptable, and adapted, with continually increased good results, to the varying

circumstances of the nation and of human progress, are most trustworthy *tests* of their soundness and their truth. It has been also shown that they contain intrinsic marks of changeless truth, and of the importance, therefore, of maintaining them constantly respected and ever unviolated. Hence the importance of fixing attention upon them as moral landmarks. Hence the importance of fixing attention on all violations of them. It is a necessary corollary from the proved truth and importance of those laws and institutions, that all violations of them must always be, not only clearly "illegal," but as clearly "pernicious."

Commissions of Inquiry, to which attention shall in this chapter be confined, are Commissions appointed by the Crown for the purpose of publishing a judgement "by authority" upon matters affecting either public or private interests, or both; and by which, therefore, the persons and properties of individuals are brought into question. The Commissioners are nominated by the Crown. There is no power given of challenge either to the array or the polls. There is no presentment before adjudication. What evidence they please is taken and no more. All evidence is taken in secret; and so much published as, and when, they like; and with such an accompanying *gloss* as they please to give it. No liberty of cross-examination,—that is, of extracting dissimilitudes,—is admitted. Judgement is pronounced in the absence of every party affected, or whose property or interests are brought in question. An unlimited authority to squander money is assumed. Finally, authority is pretended to be given them to require the attendance of

any person, documents, &c., and to administer an oath to any party whom they please*.

No one can even look barely in the face of these essential and unqualified characteristics of Commissions of Inquiry without at once feeling that such instruments can never be had recourse to for a good purpose, or where truth for its own sake is desired, and not feared. By the term "good purpose" it is not meant to assert that no one ever suggested or approved of such commissions with no other than a bad motive. So many really well-meaning men always look at any scheme or crotchet of their own as the one thing necessary to the salvation of mankind, that it is the *end*, and not the *means*, which they too often regard. And it is sufficiently obvious that every means by which that end seems likely to be secured will be approved and,—often quite honestly,—believed to be good. Thus the very circumstance of these illegal courts or commissions being composed of picked men, on whom they can depend beforehand as to their general views,—the mirror in which they will see all facts; of their not being liable to challenge; of their taking no evidence but what

* In the Law of Marriage Commission the usual oath clause is omitted by some extraordinary circumstance, probably of honest personal scruples; but the equally illegal clause as to requiring the attendance of persons, and calling for "books, documents, registers and records" is contained. When one sees Commissions gravely made out, with the names of lawyers upon them, in which these preposterously illegal clauses are contained, one is involuntarily reminded of what Cicero says of the Roman Augurs; who, he wonders, could ever meet without laughing in each other's faces at the absurdity of their pretensions, and at the way in which, notwithstanding, they succeeded in imposing, by them, on the credulity of the public.

they please ; of their taking all that evidence in secret, and making public so much as they like and no more, and when they like ; of their not allowing cross-examination ; of their allowing no opportunity of answer ; of their adjudicating in the absence of all parties charged ; of every means being present, in short, by which it shall be next to impossible for any opposite view to have any hearing at all, for any dissimilitudes whatever to be brought up in answer to the similitudes which can always be collected with a little care ;—all these are recommendations of these Commissions of Inquiry to this class of philanthropists. If perchance a voice is raised adverse to the scheme or crotchets in which any Commission originated, and which it is intended to promote, they protest, with much expense of pity and lamentation, that ignorance and prejudice ought not to be allowed to stand in the way of the enforcement of their enlightened views. Thus it is that such Commissions always will have supporters and admirers, as they always have had.

The very fact of the appointment of such Commissions is, however, conclusive evidence, unless an almost inconceivable ignorance be, in charity, presumed, that simple truth-seeking is not their object. Straight-forward simple means are already provided, of the *fullest, completest, and most efficient* character, by the laws and institutions of the land, for getting, in a regular, legal and open course, at all and any information which can ever be needed or useful. The very fact of the appointment of such Commissions, avoiding those legal and regular tribunals and means, and with the characters which have been seen to mark them, is demonstrative evidence of the consciousness of

the necessity for a one-sided and irregular proceeding in order to gain some end. This consciousness may, and no doubt oftentimes does, disguise itself under various specious forms. It may often be unrecognised in its nakedness. But it is, of necessity, always really present. The man who is conscious of *truth*, and feels the strength which that consciousness must always give, will never have recourse to other weapons than those of argument and example to illustrate it. He will know that no truth can ever be propagated by fraud or force, or by the concealment of any facts, or letting only a one-sided view of them be taken.

That which is not the truth may, of course, at any time, by this unnatural means, be made to seem to be the truth, and so impose upon many not accustomed to logical inquiry. The end will, however, always be that the actual truth is, for a time longer, hidden and buried, until sad experience shows the evils of the spurious article foisted on the public in its place.

There is no truth, be it great or small, which, when once earnestly seen by one man, and with earnestness and moral courage preached by him, will not work its own way, by sure steps, into the public mind. It is clearly only when any truth has thus *worked its own way* into the public mind that any true *idea* can grow up from it, which, really felt and earnestly uttered, constitutes a national will,—and, so, while it gives sanction to any law, will ensure to that law obedience and respect. The means to the diffusion of such truth are always open to every man ; and, still more, to every set of men who, mutually earnest in that truth, combine to teach it. For the diffusion of that truth to be

sound and real, and such as to produce sound and wholesome fruit, that diffusion must be gradual, but it will be always sure. If, impatient of that means of diffusion, any man or set of men seek to ram any doctrine down the throats of the public by other means,—by measures partaking of any of the qualities of “Commissions of Inquiry,”—the earnest man will always feel assured that the sincere and simple love of truth and of human progress is not the prompter of the course adopted; that there is wanting the in-born consciousness of an earnest truth, and of a true human mission to teach it.

But it is far less trouble to adopt the opinion of others than to think for oneself. There is no truth the actual investigation of which does not require much active personal exertion. That indisposition to personal exertion which has been already mentioned is peculiarly favourable to the success of these Commissions. In persons of such disposition, feelings naturally of the best character, and motives originally really disinterested, degenerate into that sentimental philanthropy which is so very rife at the present time, and which is so invariably mischievous. That sentimental philanthropy will fasten on any object that is presented to it and promises to save it the trouble of that severe inquiry which is, however, always necessary before the adoption of any plan or system by which the welfare of our fellow-creatures can be really promoted. Commissions of Inquiry are a godsend to persons of such disposition. The pictures of horror artfully put together in the pages of blue books are greedily devoured, and serve as food for the sentimental philanthropy of the reader; while the reports

themselves are accepted as infallible gospel. Calm reasoning and earnest personal investigation of the truth ought alone to form the guides by which the noble impulses of human charity and kindly sympathy shall be directed. When not so guided, those charities and sympathies sink into mere animal instincts, having no moral dignity and no real motive save that, however unconsciously, of selfish gratification.

The same disposition, so lamentably prevalent at the present day, always leads to a worshipping of "authority." There are sycophants in all ages. There are as many, if not more, in the present age in this country, as in any former age. It is always convenient to governments to encourage sycophancy and to discourage independence of thought and action. And the wider government patronage extends,—the more extensive, in a word, becomes the system of Commissions,—the more is sycophancy directly fostered and encouraged. But the sycophancy which thus grows out of self-interest is different, more base indeed but often less grovelling, than that which grows from the constitutional habit above indicated. Ready to pin faith upon any one else rather than actively and earnestly to exert themselves to find out the truth, those of such habit are especially disposed to take up, as infallible, anything which comes forth with any assumption of "*authority*." Vulgar and uneducated minds are usually imposed upon by such assumption. They have not received that cultivation which enables them to distinguish a sham from a reality. Hence centralizing governments always talk loudly of "public education," that is, seek control over the minds of the people in all ways, so as to be

able to keep them from thinking, and so from knowing a sham when they see it. The temperament of the sentimental philanthropists leads to the same result. This is well known to the workers of Commissions. They reckon on this for their harvest. They delight, therefore, in huge seals, and high-sounding and pompous phraseology, all of which excites the admiration of the vulgar or the indolent depender on shams; but it can excite the contempt only of the man of independent thought and honest purpose.

A striking confirmation of the correctness of these remarks is afforded by the fact that it is not the *evidence* but the *reports* of Commissions, as disseminated through the newspapers and in other ways well known to the initiated, which are read. "Do you suppose," asks the chairman of the Committee of the House of Commons on Miscellaneous Expenditure for 1848 of Mr. McCulloch, "the appendices to the Commissions are ever sold? *Some few: one in ten may sell tolerably well*.*" So sycophantic or indolent, or both, are the minds of those who alone attach any importance to these Commissions that they swallow the reports as "authority," seldom thinking of looking into the evidence, picked and *ex-parte* as that necessarily is. This is precisely what is reckoned upon in order to be able to carry out the ultimate ends for which those reports are foisted on the public, with the object of creating a false and factitious subservience to "authority," instead of a real and healthy formation of *opinion*.

There will always, then, be a large class to which these Commissions may safely look for support and

* Query 1032.

to be quoted as admirable contrivances. The class is increasing : that fact is unquestionable. The tendency of the whole system is to depress individual thought and effort ; to impose upon it under specious pretences of authority ; to cramp the development of individual ideas and check the individual search after truth ; to induce men (too ready to be so induced) to accept any *vade mecum* which may offer itself, instead of themselves earnestly battling with the questions until the truth has been won by self-exertion ; to make men, in short, depend on the thoughts of other men rather than on those which earnest careful inquiry has led themselves to form. The class must increase the wider the system spreads ; and the two mutually re-act to increase and spread each other. Besides this, *the substantial profits which follow* to so many from the system are continually held up and trumpeted before men. With this temptation added to the unhealthy fascination of that sentimental philanthropy before named, there can be no wonder that a vast number of men, naturally of the best intentions and kindest feelings, are inveigled into a course which is as much opposed to the true interests of humanity and the progress of the race as it is subservient to the ends of government in increasing the amount of patronage at their disposal, and, thereby, necessarily lessening that *responsibility* to the will of the nation which ought to be complete. Whatever be the form of government, whether or not “ the *theory* of a free government remains unaltered,” an actual and grinding despotism can be the only result of such teachings “ by authority,” and of such willingness to follow such a guide, and to seek such opportunities of sharing in its favours. It

has been most truly remarked by Mr. Mill, that "In proportion as the people are accustomed to manage their affairs by their own active intervention, instead of leaving them to the government, their desires will turn to repelling tyranny, rather than to tyrannizing; while, in proportion as all real initiative and direction resides in the government, and individuals habitually feel and act as under its perpetual tutelage, popular institutions develope in them, *not the desire of freedom, but an unmeasured appetite for place and power; diverting the intelligence and activity of the country from its principal business to a wretched competition for the selfish prizes and the petty vanities of office*.*."

Did space permit us to go through all those *more than one hundred cases* in which, within the last twenty years, Commissions of Inquiry have, in defiance of both the letter and spirit of the law of the land, been issued by the executive, it might most readily be shown that the remarks which have been made apply equally to all. From church revenues to potatoes †, and both inclusive the very useful instruments of party purposes and popular declamation have been subserved by giving promulgation to one-sided views of facts, and a false credit to the opinions of individuals, —many of them of unquestioned honesty and ability, but liable to error,—through the means of Reports issued "by authority," but at the public cost, from the secret closets of packed Commissions.

* Political Economy, vol. ii. p. 515.

† The issue of a Commission of Inquiry into the length of the tail of the Great Sea Serpent was unfortunately stopped, just before the seal for it was finished, by the publication, *without* "authority," of Professor Owen's letter on that subject.

So far, indeed, has this illegal system of teaching “by authority” been carried, that poor laws and public health, first lessons in reading and the rudiments of mathematics, are equally to be taught to great and little children “*by authority.*” Some time ago an edition of the Public Health Act was ostentatiously advertised as about to be immediately published “*by authority.*” The Public Health Board received a hint that this pretentious imposition on the public was illegal, and would not be suffered to pass without the castigation it deserved. The consequence has been that the publication was delayed for several months, and at last appears shorn of its “*by authority.*” The temptation to impose upon the public was, however, too great to be resisted; and so we have, advertised, on the back cover of this very book, as published “**By Authority,**” several forms, &c., which no one has power to draw up, and still less can give power to publish, *by authority.* And the publishers of these precious documents style themselves “*Printers and Publishers of BOOKS and forms under the Public Health Act.*” It is unnecessary to specify other instances. They are too well known.

If Professor Owen publishes a work on Comparative Anatomy, or Professor Lindley on Botany, such a work carries in itself a true weight of genuine authority, which every one who knows the direction of the inquiries of each, and his careful research and laborious personal investigations, will readily receive with gladness and respect. The energy of the individual is felt to have been devoted to a good work, with a healthy and justifiable confidence that, in that work, something was to be achieved. But if, instead of this

self-depending energy,—this manful confidence that, though liable to error, careful investigation and anxious inquiry would lead them to a true goal,—their works were put forth as published “by authority,” those works would, most properly, lose the best part of their moral weight, and their authors lose all claim to confidence or respect. Something else than their intrinsic worthiness is admitted to be wanting to recommend such productions to public credit. But the attempt thus “by authority” to coerce opinion will be indignantly repelled by every generous mind as an insult to the understanding of a free man.

Thus is it, and with such trustworthiness, that opinions may be crammed down the throats of the people “by authority” when any government is dishonest enough so to abuse the opportunities in its hands, and so to rely on the weaker and more degraded side of human nature as a means of increasing its own power. That “half-development” of the faculties, that “degradation of slavery,” under the prevalence of which such things may be done with impunity, are the conditions fostered and cherished and striven to be maintained for ever by the system of Commissions.

How convenient is it to stop the mouth of any member of the House of Commons, if an inconvenient question is asked, with the promising of a “Commission of Inquiry!” How easy is it, in order to perpetrate any job, or find a birth for any hanger-on of government, or bolster up any notoriously bad case, or manufacture a case for some new experiment or empirical legislation which shall increase government patronage, to get out a “Commission of Inquiry!” Till the public voice has sternly demanded and in-

sisted on the abandonment of the whole illegal and pernicious system, it cannot be expected that such a convenient instrument will be abandoned. Until this abandonment is compelled, the degradation and corruption of independence and honesty which spring from the system will go on daily increasing, and the "wretched competition for the selfish prizes and the petty vanities of office" become more keen*. Mr. M. A. Titmarsh found that the young fellow in Dr. Birch's academy who was "pretty sure to succeed" was "*on the liberal side.*" No doubt that the "liberal" is the paying side just now, and the young gentleman had, in all probability, some snug birth in some Commission in his eye, or some of the numberless jobs which are being daily perpetrated under cover of one or other of those Commissions. There is, alas, no doubt that tools enough will always be found willing and eager to aid in carrying out the system, and to work Commissions of Inquiry and all other Commissions to the hearts' content of their employers in cramping and fettering the minds of the public to an only half-developed state, and till the

* It is painful and humiliating to perceive these effects openly exhibited among those who, if any, ought to be superior to such considerations, and the loss of whose independence is the surest indication of the tendency of the whole system to the degradation of the entire national mind. No profession ought, in order to discharge any of its duties rightly, to be more honourable and independent than that of the Law. There is no profession to whose subserviency government has thrown out so many baits. Every man, now, who is too indolent or incapable to hope to succeed in his profession by honourable and independent efforts, sets to work to look out for "an appointment." Not a day passes but the hope is heard expressed or the expectation whispered.

whole nation is reduced to a level only with "any herd of animals."

Some of the circumstances which enable such an illegal and pernicious system as that of Commissions to exist at all in a country boasting any free Institutions having been thus briefly pointed out, we shall proceed more instructively to the more detailed illustration of the system itself.

It has already been shown that, for inquiry into every possible subject which it can be for the interest of the public should be inquired into and thoroughly investigated, simple and most efficient means are provided by the fundamental laws and institutions of this country. Every matter which is not merely the subject of individual concern, must concern either (1) a special district or locally united body, or (2) the community in general. Very many topics, though of special local importance, do also affect the interests of a wider portion of the community, and may possibly affect those of the whole. These must, of course, come under the second of the two classes just mentioned. It is precisely to this twofold division that the fundamental laws and institutions of this country have continual reference. Provision is made by them for the most thorough sifting and investigation of all matters of the first class by institutions of local self-government and of inquests; for the most thorough sifting and investigation of all matters of the second class, as well by the institutions last named as by the general council,—the grand inquest,—of the whole nation, which represents, not one local interest merely, but the interests of all localities throughout the country. And this latter has, by ancient custom, always

been in the habit of arraying, out of its own body, committees, or juries of inquest, for any matter needing special investigation, just as the local inquest is the instrument, admirably contrived, for the investigation of any special point in any local district. The appointment of "Commissions of Inquiry" is an open contempt of this ancient and sound principle and practice of the law of the land; an attempt to do by a new instrument, entirely under the control of government, that which has, from the earliest times, been provided for being done apart from any partial interested control whatever, and therefore far better and alone trustworthily done. The UNITY which pervades the whole system of our Fundamental Laws and Institutions has been already dwelt on at the end of the last chapter. If that UNITY were borne in mind we should never hear those idle discussions as to the true functions of government, which, without the guide of such a principle, can result in no good, but of which governments will always take advantage for their own purposes; too gladly availing themselves of the *exceptions* which are sure to be made in such discussions, but *not one of which can possibly be admissible when the subject is considered with a reference to true PRINCIPLES*. The Unity which thus prevails through our fundamental laws and institutions having already provided the best machinery for carrying on all necessary investigations and inquiries, the illegality of any attempt to constitute new methods of inquiry without reference to that Unity follows as a corollary; as does the same illegality from other considerations to which attention has been already called.

In addition to this, however, it has been fully shown

in the former Book that the institution of any new Courts, whether of Inquiry or otherwise, by the Crown, is an express violation of certain fundamental laws and institutions. Every "Commission of Inquiry" is one of those new courts which have been seen to be prohibited, as well directly as by necessary implication, as "tending to the grievous vexation and oppression of the subject*." While every such Commission necessarily infringes the fundamental laws relating to the body politic, it is clear that it also affects, and is intended to affect,—and so violates the fundamental laws and institutions relating to,—the rights of person and property; matters which such care and pains have been taken for upwards of a thousand years to place under the protection of the "ordinary courts of law and the ordinary course of law." Many recent and existing Commissions of Inquiry are directed to matters most seriously and immediately affecting the rights of private property, the "lands, tenements, hereditaments, goods and chattels" of every individual, either in certain districts or throughout the whole land. Every one that ever was or can be appointed must obviously do so in a greater or a less degree.

The fundamental laws of England relating to the maintenance of the body politic require, as has been seen, that the government shall be but the instrument by which the free will of the nation shall be put into action. Commissions of Inquiry are appointed for the purpose and with the effect of cramping and dwarfing the minds of the people, and reducing them to that state of only half-development that they shall be unable to know the difference between a sham and

* 2 Inst. 540.

a reality, between a truth and a falsehood ; and so can have no healthy will, but must follow as a “ herd of animals ” any empiric who can get possession of a little brief authority.

Those fundamental laws require that no step whatever shall be taken without the advice and consent of Parliament first asked and obtained. Commissions of Inquiry, though affecting, and intended to affect, the most important and extensive interests, are appointed at the mere motion of the advisers of the Crown.

Those fundamental laws require that no office shall be appointed or any thing done by which any charge shall be incurred, without the consent of Parliament first asked and obtained. By Commissions of Inquiry enormous charges are incurred without any reference whatever to the assent of Parliament. Paid secretaries are, with few exceptions, appointed. The Commissioners themselves are often paid. Expenses for experiments are often incurred. Enormous expenses for printing and short-hand writers’ notes are always incurred ; which *alone, indeed, exceed the entire amount of the similar expenses incurred by all the business of the House of Commons**.

Those fundamental laws require that every matter in which the whole community is interested shall be considered of and determined by the common council of the whole nation in Parliament assembled ; and absolutely prohibit any such matters being determined by the Crown, the Privy Council, or any servants or creatures of the Crown, or any body nominated by it.

* Evidence on Miscellaneous Expenditure, 1848. Queries 823, 824, 1018, &c.

Commissions of Inquiry are, most of them, appointed for the express purpose of adjudicating on matters in which the whole community is interested ; are nominated solely by the Crown ; are dependent entirely on it ; are utterly irresponsible to the people ; and altogether usurp, therefore, in so far, the functions of Parliament.

Those fundamental laws require that every matter in which particular local districts only are interested shall be considered of, and determined, by the local self-government of that district, or an impartially arrayed jury thereof ; that is, by those who alone can understand the circumstances of the case and the various similitudes and dissimilitudes of any proposition. Commissions of Inquiry, arbitrarily appointed by the Crown, and necessarily ignorant of the circumstances and interests with which they have to deal, are, many of them, appointed for the express purpose of adjudicating on matters in which particular local districts only are interested ; are irresponsible to those local districts ; and altogether usurp, therefore, in so far, the functions of local self-governments.

By the fundamental laws and institutions relating to the rights of individuals as individuals, the appointment by the Crown of any new court, commission, or authority of any kind, by whose determination any of the rights of person or property of any individual can be in any way affected, is expressly prohibited. Commissions of Inquiry are appointed by the Crown for the express purpose of adjudicating on matters by which rights of person and property, often of the utmost importance and most momentous interest, shall be affected.

Those laws and institutions require that no charge or question shall be raised affecting property or person on the mere motion of any individual in authority, nor unless supported by the testimony of known and responsible witnesses. Commissions of Inquiry assume, on their own authority, to publish charges of the gravest nature against individuals and public bodies, unsupported by any real testimony whatever.

Those laws and institutions require that no inquiry or adjudication shall be made except in open court, to which the public have access, and where all the proceedings are immediately open to all the world. Commissions of Inquiry are altogether conducted in *secret places* to which the public has no access; and so much only of what is taken down or heard as suits the special purpose is made public; and that not till long after it was uttered; and in a shape which may convey an entirely false impression of its real sense or spirit.

Those laws and institutions require that no inquiry or adjudication shall be made affecting property or person, except by a full jury of the peers of the parties affected, having most knowledge of the matters in question, the most ability, and altogether indifferent and without suspicion as to any bias or influence. Commissions of Inquiry are always packed, and packed by a party always contriving, if possible, to have a special interest in the result. The Commissioners are often not the peers of those whose persons or properties are affected; there is not a shadow of security that they shall ever have even a competent knowledge of the matter in question or ability to investigate it; interest or other special motive guides every appoint-

ment ; and, from the mode of their appointment, there never is a case in which their indifferency is secured, or in which they can be free from the just suspicion of bias.

Those laws and institutions require that every man whose person or property may be in any way affected by any adjudication shall have the right of challenge both to the array and to the polls of the body by whom the adjudication is to be made. Commissions of Inquiry are always packed by the Crown, which has thus always an interest on one side ; but no opportunity of challenge, either to the array or to the polls, is ever given.

Those laws and institutions require that no adjudication shall be made till after both sides have been heard, or a full opportunity of answer, and of producing any witnesses or other evidence, given to the party implicated. Commissions of Inquiry take evidence in secret, and neither allow of cross-examination,—by which the best means of answer is usually afforded,—nor of any charge being met by reply or evidence, nor of any witnesses except such as they please to hear being produced. Their whole proceedings are *ex-parte*.

Those laws and institutions require that no court shall open questions relating to any right of property or person except such as have power to compel the attendance of any and every person having knowledge of the facts or possession of any evidence, and to bind such person by oath to speak the truth ; that so no man may be condemned or affected by the malice of one-sided evidence, or suffer by false witnesses without a remedy for perjury. No Commission of In-

quiry, whatever illegal pretensions it may make, and so impose upon the ignorant, ever has, or can have, any power or authority whatever to compel the attendance of any single person or document, or to administer any oath ; so that *ex-parte* evidence, whatever the character of the Commissioners, is a necessary result, and no punishment for false witness can exist.

In every point, without exception, which has been provided by the fundamental laws and institutions of the land, Commissions of Inquiry openly and flagrantly violate those fundamental laws and institutions ; bring all the laws and institutions of the land into contempt ; and thus daily more loosen and endanger those guarantees for the security of person and property, on whose sacred inviolability must ever depend public prosperity and private security and any hope for human progress.

The assumed powers by which these Commissions impose on the uninformed public have been alluded to. The really mere childish assumption contained in the pretended and pompously paraded powers to call for persons and documents is so clear that no good end can be answered by touching more fully on it. But the attempt to administer oaths, which stands on precisely the same footing as to the point of mere mockery and illegality, involves, also, points of a more serious character. As this pretension deliberately tampers with some of the dearest feelings of mankind, and their profoundest sentiments, some further observations on its open illegality will not be out of place.

By the law of this country any man or body of men

is, very properly, prohibited from administering an oath,—that is, solemnly invoking the Most High to the truth of the facts deposed,—unless it be clearly allowed by the Common Law or by express Act of Parliament. It has been seen that “all Commissions of New Inquiries” are themselves “against law,” and an open violation of every fundamental law and institution of the land. Of course, therefore, the administering of an oath by them is entirely illegal and without any moral or legal warrant whatever. Were the common law on this matter not perfectly clear, on which, however, not a shadow of doubt exists, it has been expressly declared by Act of Parliament of 5 & 6 Wm. IV. c. 62, that “it shall not be lawful for any justice of the peace, *or other person*, to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit or solemn affirmation touching any matter or thing whereof such justice or other person hath not jurisdiction or cognizance *by some statute* in force at the time being: Provided always that nothing herein contained shall be construed to extend to any oath, affidavit, or solemn affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, *or touching any proceedings before either of the houses of parliament or any committee thereof respectively;*” with other exceptions as to regular judicial proceedings. Commissions of Inquiry are, of course, not here excepted. *Any administration of an oath by any Commission or Commissioner is therefore illegal, and in open defiance as well of the common as the statute law.*

Coke justly says that attempts to administer oaths

by such bodies are "*nova tormenta*" rather than "*sacramenta*." And the same high authority declares that every administration of an oath without warrant—and he happens to be speaking with express reference to such Commissions as we have in hand—is a "*high contempt, to be punished by fine and imprisonment*." "*And therefore*," he adds, "*Commissioners that sit by force of any Commission that is not allowed by the Common Law nor warranted by authority of Parliament [in defiance of both of which it has been shown that Commissions of Inquiry sit] that minister any oath whatsoever, are guilty of an high contempt, and for the same are to be fined and imprisoned*." "AND," he expressly adds in this important passage, "COMMISSIONS OF NEW INQUIRIES, OR OF NOVEL INVENTION, ARE AGAINST LAW, AND OUGHT NOT TO BE PUT IN EXECUTION*."

It will be beyond the boldness even of any tool of these executive usurpations to maintain that any Commission of Inquiry has, or can have, any authority whatever to administer an oath. The point is so clear that it is unnecessary to illustrate it further. Every Commissioner who has ever acted on any Commission of Inquiry in which this authority has been pretended to be exercised has therefore, besides aiding in the violation of the fundamental laws and institutions of the land, been guilty of an open and notorious high contempt, *and is punishable by fine and imprisonment*. Many a poor man has been 'prosecuted, even within very recent years, for the administration of unlawful oaths, and has suffered grievously for so doing. But every man who ever sat on any Commission of In-

* 3 Inst. 165.

quiry while an oath was being administered was guilty of as flagrant a violation of the law ; and was really far more criminal, inasmuch as his education gave him far better means of knowing the law, and being duly impressed with the moral sanction upon which that most wholesome law is founded. But if every man who has ever thus been party to the administration of an illegal oath on a Commission of Inquiry has been unquestionably criminal, inasmuch as he has assumed to force other men to invoke the Most High without first ascertaining what warrant he might have for thus trifling with the awful sanctions of religion, in what light are we to view the conduct of those who have thus, for their own purposes, deceived the men whom they have nominated on such Commissions? Many a man has been named on such Commissions to whom it certainly never occurred that the whole system was illegal and in open violation of the fundamental laws and institutions of the land. As little did he dream that he was being made the victim of the solemn mockery of having a pretended warrant given to him which professed to authorize him to administer an oath, while those who made out that pretended warrant knew, or were bound to know, that the acting on that pretended warrant would expose him who did so to the penalties of fine and imprisonment, as guilty of a high contempt of the very wholesome spirit of the common law and the express letter of the statute law.

It is difficult to restrain the expression of that indignation which cannot but be felt at proceedings such as these. For the investigation of the truth before legal tribunals the administration of an oath has

been thought wise, and is required by law, in order that the necessity for deliberateness and caution may be impressed, and that every highest sanction may be given to proceedings whose object is the attainment of truth,—the attainment of which is, at the same time, in other ways scrupulously provided for. By Commissions of Inquiry every one of these latter provisions is violated and disregarded, but it is thought that such violation may be concealed from superficial observers by the assumption of the power to administer an oath. This is placing a reliance, as so many of the illegal devices of these Commissions do, on being able to impose on the weakness and ignorance of mankind. Every man who knows the difference between truth and falsehood, and has studied in the least degree the constitution of the human mind, is well-aware that a man with preconceptions,—the picked witnesses of Commissions,—may put forth the similitudes which alone he is able to see, as *the truth*, with the utmost positiveness, ay, and good faith too. He will assert those similitudes as confidently under oath as without that test. His defect is that he sees only a *part* of the facts. A cross-examination, never provided for or allowed on any Commission, could alone extract the real truth. Under that check the oath might have some value. It might compel him to acknowledge, with more unreserve, the dissimilitudes which would so be, for the first time, presented to his notice, and which, as militating against his preconceptions, he would naturally seek to evade. Thus the administering of oaths by Commissions of Inquiry, were it legal instead of illegal, would, as all Commissions of Inquiry are conducted,

have none of the advantages and uses which its administration has in courts of justice, and would therefore be a mere mockery. Its illegal actual pretension is a mere blind to those sycophantic souls or ignorant minds which tremble at every empty assumption of authority.

It is quite impossible to suppose that the recognized and legal advisers of the Crown have been so ignorant as not to know that, with one or two exceptions, every Commission issued contains on its face, besides the other brands of illegality alluded to, an assumed grant of authority, the exercise of which exposes every man who relies on it to the immediate penalties of fine and imprisonment for a high contempt as well of law as of morality.

It is on the respect which all have for the law that the peace and good order of every community must depend. It is the duty of governments to set the highest example of respect for the law and obedience to it. What respect can the people have for the law, or what respect and confidence can any government deserve or command, when it not only itself openly violates the fundamental laws and institutions of the land by a systematic course of procedure adapted to its own aggrandizement, but deliberately inveigles other men into a violation of the law in a matter, which, as in this of the administration of an oath, involves the highest moral and religious sanctions to which appeal can be made? What can be so surely calculated, as well to bring the law and its thus made *partial* administration into contempt, as to lessen those feelings of respect which ought, in every healthy community, to attach to the chief magistrate?

Let us next glance at the extent to which this illegal system has been carried.

A return was last session made to the House of Commons by which it appears that, between the 8th July 1831 and 15th Feb. 1848,—that is, in sixteen years and a half,—no less than NINETY-ONE Commissions of Inquiry, *eo nomine*, had been constituted. *That is, more than five new and illegal courts have, on an average, been erected by the government of this country in every year for the last sixteen years.* Nor does this number by any means include all the actual Commissions of Inquiry. One extensive series of these Commissions of Inquiry will be presently mentioned, which is not at all included in this list. And there are several smaller jobs of the same kind which ought to have been added to the return, but which are not so. It will be sufficient at present, however, to take this return as the basis of a few remarks.

It appears, on the face of this return, that those Commissions named in it have, within the period stated, cost the country no less a sum than six hundred and forty-eight thousand, two hundred and seventy-two pounds ! That is to say, the country has, without its knowledge or assent, been taxed to that amount, and obliged to pay it in hard cash at the will and pleasure of the ministers of the crown.

But the figures in this return will greatly deceive the reader if taken as the entire amount, or approaching to it, of the irresponsible taxation which has been *directly* levied upon the nation by means of these Commissions of Inquiry. The *indirect* amount is beyond any calculation. It would seem that the government was alarmed at the facts and figures which this re-

turn would show if *bonâ fide* made out as moved for, and therefore caused the heaviest items of the direct expenses to be omitted. It will be well to help the supply of this omission.

In this return the expenses of the " Tidal Harbours Commission " are put down at £1779. Upon turning, however, to the Appendix to the Report on Miscellaneous Expenditure for 1848, it appears that the expenses incurred by that Commission, *within three years*, for *printing alone*, were £5117; and not one penny of this item, or of some others, is included in the return in question. Thus, instead of the expenses of this Commission of Inquiry having been £1779, as put down in the return, they have in reality exceeded £6900,—rather an important difference.

Again, the Tenure of Land (Ireland) Commission is put down in the return at £11,462 17s. 11d. But in the appendix already cited it appears that the unincurred expenses of printing, witnesses, shorthand-writers, &c., amounted *alone* to £13,205 16s. 9d.

Again, the Poor Law (Scotland) Commission is put down in the return at £7110 16s. 1d. But it appears by the same appendix that the expenses of printing *alone* amounted, in four years, to £10,440.

Again, the Metropolitan Railways Termini Commission is put down at an expense of £502 2s. 4d. But it appears from the above appendix that the expenses of printing *alone* amounted, in two years, to £2857 15s. 8d.

Again, the Gauge of Railways Commission is put down at an expense of £1350. But the cost of printing *alone*, for less than three years, is £1695 12s. 3d.

Again, the Metropolitan Sanatory Commission is

put down at £717. But the expense of *printing alone for less than fourteen months* is put down in the appendix above-cited at £1041 ; while it appears by the same report that a further additional charge of £2500 had, before the printing of this return, been imposed upon the public for this Commission, in respect of wholly unauthorized salaries and otherwise, making a total of £4258 instead of £717. And even this sum of £4258 has, by some legerdmain, been increased to £5000.

These are mere instances taken without any special selection. They fairly represent what is the sort of *real* expense incurred by these Commissions, and how easy it is for the public to be deceived by false returns. It would seem that double the amount stated in this return as the expense of these Commissions is much nearer to the truth. There is every reason however to believe that even that amount is very far under the mark.

It has been expressly given in evidence before a Committee of the House of Commons by an unexceptionable witness, in answer to a question as to the causes of the “greatly augmented expenditure,” that “*they are mostly the new Commissions of Inquiry, which cost very little for stationery but are generally very expensive in printing.*” “I should not be surprised,” he adds, “if the sanitary printing were to come to £10,000 or £12,000. When I came to the stationery office in 1838 we supplied 143 offices with stationery ; now we supply 217 offices, or thereabouts,”—being new government jobs created since then. This witness elsewhere says, “*The House of Commons is not anything like so expensive an establishment as the Com-*

missions ; you can never tell what the expense of a Commission may be when it is instituted ; *it may run up to any expense**." And the same witness also speaks of the expense and waste occasioned by reprinting the reports and evidence in a double form, first folio and then octavo ; a thing of which some Commissions are especially fond, and which, like all the other printing, is done without any authority whatever of parliament.

It is instructive to observe, by examining the return which has been cited, that those Commissions which related to the collection of the revenue and the salaries of officials all expired within a very short time of their birth. There was nothing to be said in defence of the systems into which, to stop the mouth of some importunate member, they were pretended to be appointed to inquire ; so they silently died out. It is when some nice job either has been or is to be concocted that we find the Commissions go on flourishing year after year ; and some of them are likely to flourish till the public put an extinguisher upon the system altogether. We are told now again of certain inquiries making into the salaries, &c. of certain departments. By whom are they making ? By persons themselves interested in the departments, instead of by indifferent and impartial persons. And, if any alteration and economy ensue, they will be in cutting off the places, salaries, or emoluments of the inferior officers, leaving the superior ones untouched ; just as, some years ago, the drivers of the mails were deprived of their annual great coats, and, so, many were made to suffer much to save a few pounds, while the salaries of high offi-

* Committee on Miscellaneous Expenditure, queries 823, 824, 1018, 1023, 1024.

cials remained still exorbitant. Such is always whig retrenchment.

It would be impossible to go through all the Commissions named in this return, and expose the origin of each, its working, and its various direct and indirect consequences. Brief notice of a few must be sufficient. The observations which have been already made as to illegality and perniciousness apply to all.

The Poor Law Commission Inquiry might be made the text for much observation. A single instance, however, from the reports "by authority" of this Commission will be sufficient to show how Commissions of Inquiry are merely instruments for the perversion of the truth, and for the putting forward of certain theories and crotchets in the teeth of evidence which, even on the *ex parte* system adopted, happens to be given adverse to those theories and crotchets. A point strongly insisted on by the Commissioners was the improved condition of agricultural labourers. What were the allegations made by them on this subject,—to suit certain preconceived notions,—and what was the foundation for those allegations, will appear from the following extract from an article recently published in a highly respectable and influential journal*.

"That which the Commissioners themselves in their report (p. 2, 8vo ed.) describe as 'the most valuable part of their evidence,' was a digest of the answers to queries circulated by the Commissioners through all the parishes in England and Wales, forming the appendix (B) to the report, and containing about five thousand folio pages. Now, in the most important part of their report (that on Remedial Measures), the

* *Jurist* of July 22, 1848.

Commissioners make certain assertions respecting the condition of the agricultural labourers, which are directly in the teeth of this evidence.

“ ‘ We can state,’ they say (Report of 1834, p. 228, 8vo ed.), ‘ as the result of the extensive inquiries made under this Commission into the circumstances of the labouring classes, that the agricultural labourers when in employment have greatly advanced in condition ; that their wages will now produce to them more of the necessaries and comforts of life than at any former period.’ Now, instead of this being true, it is proved by the most unexceptionable evidence, and recognised by many writers of authority (among others, by Mr. Senior, in his lectures on wages, delivered before the University of Oxford in 1830), that ‘ the labourers in the reign of Henry VII. earned two pecks of wheat a day, and now (1830) earn only one.’ (Lecture I. p. 2.) But we once had occasion to make a most minute investigation of the evidence, particularly the very voluminous appendix (B) above mentioned, upon which the report professes to be founded ; and the result is, that, though undoubtedly there are some witnesses who state that the labourers ‘ are better off now than formerly,’ *the proportion of these to the witnesses who state the contrary is less than one to ten.* We do not discuss the precise value of this evidence ; the present question being, whether the evidence, such as it is, has been honestly dealt with. The parties who wrote the above-cited passage either knew the evidence collected under the Commission, or they did not. It is needless to characterize the horns of this dilemma, upon one of the horns of which they have taken up a settlement.”

Since the centralizing ends of government were followed up by the growth of the Poor Law Board out of the Poor Law Inquiry Commission, that board has been made the medium of several other attempts to fetter and tie down public opinion. Violating, for that purpose, the commonest rules of inquiry and evidence, certain "Reports" have been put forth "by authority," but which really contain only the particular notions of one individual already completely compromised to the centralizing system. To impose the task of making such reports upon that individual was, besides being an insult to the public, an act of injustice to him, as he had, or ought to have had, very different duties to perform. It was a task which it was quite impossible for him, if ever so well informed, to have performed properly. These "Reports" would not, therefore, have been noticed at all but for the way in which, by sentimental philanthropists and other worshipers of "authority," they have been relied on and made use of. Nothing, however, can excuse the mode in which some points have been dealt with as to which means of exact information were within the reach of every one, or the presumptuously condemnatory language employed as to persons and bodies as to whose proceedings, and all the incidents of such proceedings, the writer was obviously in a state of the completest ignorance, but upon which it helped the object of the Reports to heap abuse. Neither can anything excuse such direct misrepresentations of fact, made to suit a foregone conclusion, as are pointed out in the following further quotation from the article already cited.

"Taking up another of those documents which pro-

fess to deal with evidence 'by authority,' the 'General Report from the Poor-Law Commissioners in 1842 on the Sanitary Condition of the Labouring Population of Great Britain,' we read, at p. 188, 'An eminent manufacturer (quære, of evidence?) in Lancashire stated to me in November ultimo, That the same yarn which cost my father 12*d.* per lb. to make in 1792, all by machinery, now costs only 2*d.* per lb.; paying *then* only 4*s.* 4*d.* per hand wages weekly, *now* 8*s.* 8*d.*, or more.' 'The prices of provisions,' adds the reporter, 'were, during the first period, as high as now, and the cost of clothing thirty or forty per cent. higher.' In 1792, the price of wheat (Winchester quarter) was 42*s.* 11*d.* In 1842 (the *now* the reporter speaks of), the average price (for the quarter ending Lady-day, 1842) was 60*s.* 7½*d.* The price of other provisions was also higher, and of everything but cotton goods."

It is clear that no reliance whatever can be placed on any statements, still less so on any conclusions, put forth in reports of which such distortions of fact, to suit a foregone conclusion, form any characteristic.

The next Commission of Inquiry which shall be noticed is the Municipal Corporation Inquiry, which is put down in the return already quoted as having cost £24,700 for England alone,—£48,420 for Great Britain and Ireland,—and which may therefore be safely concluded to have really cost at least £50,000 for England alone, and at least £100,000 for Great Britain and Ireland.

In the reign of Charles the Second an attempt was made by a corrupt government to gain certain ends by

issuing, by wholesale, writs of *Quo Warranto* against ancient corporations. This was an illegal, arbitrary, and most unjustifiable proceeding. But there was at any rate an openness and boldness about it, and a respect for the *forms* of law, which are entirely wanting in that universal *Quo Warranto* which it was reserved for a *liberal* government to issue, without even a *colour* of legal ground, against every corporation throughout the land. It is well to profess horror of close corporations and make loud pretensions to "municipal reform." A Commission of Inquiry is an infinitely more corrupt institution, more jobbing and more mischievous, than any close corporation that ever existed.

It is a recognised maxim of law, on which indeed depends the safety and security of all property whatever, that no man can be called upon to expose his title, except on some formal charge implicating it, and which charge is itself supported by evidence. No one, again, can oust any man of his property on the weakness of the latter's title, but only on the strength of his own. There is probably not an estate in this country as to which some technical point of difficulty in the title might not be raised. The attempt to make individuals or public bodies lay open their titles to any Commissioners, or any one else, is as dishonest and dangerous as it is in flagrant violation of every just law of any land, and of the direct common and statute law of this land. The Crown has not, and never had or could have, any prerogative enabling it to put any man or corporation to such proof. If it had, it would be but affording an opportunity for confiscation and plunder under the pretence of vindicating

the rights of the Crown*. Yet such was what this Municipal Corporation Commission was appointed to do, and what it did ; and it is what, in various other ways, a centralizing Government is now illegally attempting.

The course which was obvious and easy to have been pursued, and which would have been pursued had the end been an honest and earnest one, if any suspicion of the corruption of corporations or any desire to improve them existed, will be hereafter pointed out. What now concerns us is the gross and inexcusable illegality of the course actually adopted. The following opinions of two of the most eminent lawyers who have of late years flourished in this country will best serve to put this matter in its true light. They will be seen to confirm every observation already made as to the illegality of the whole Commission system. Those opinions having been given on special points only, do not, of course, include all the points that have been heretofore enlarged upon. They are not the less worthy of attention on the points which they do raise, and to the strength of which those that are unnoticed would have only added.

“ I am of opinion,” says Lord Abinger (then Sir James Scarlett), in answer to the question whether any Commission of Inquiry could compel the attendance of persons or the production of documents, “ that the Crown cannot, by virtue of the prerogative alone, compel any subject to make communications or disclosures *upon oath*, OR OTHERWISE, *except in a due course of the administration of justice*. The Crown may issue a Commission to hear and determine offences against

* See pp. 78, 90

the law [as the ordinary Commissions of Oyer and Terminer at every assizes*] ; and in cases where the Crown is visitor of ecclesiastical corporations or hospitals it may visit by Special Commissioners as well as by the Chancellor ; but even then the visitatorial power must be called into action, like any other judicial power, by the complaint of some party grieved, to whom the ordinary means of redress have been refused, or by way of appeal from some domestic forum which has exercised its judgement upon a specific complaint. But I apprehend that a roving Commission to inquire for grievances, and to compel answers, even in cases where the Crown *can visit* by Commissioners, much more in cases where it *cannot*, is *clearly contrary to law*. *There can be no civil liberty where the law that protects the rights and enjoyment of property, and of privileges or franchises, is not administered in a CERTAIN KNOWN COURSE*. It is a principle of the Common Law, which is ever favourable to liberty, that the king cannot administer justice, *except in his courts, and by his judges, duly established*. *He cannot compel any person to make disclosures, even for the avowed purposes of justice, or the redress of grievances, except in the established Courts of Equity or by courts administering justice according to the Common Law*. In my opinion *it is not consistent with the law, OR THE LIBERTY OF THE SUBJECT*, that Commissioners appointed by the Crown to inquire into matters of property or franchise, or any other matters or grievances of which the king's ordinary courts have cognizance,

* For a sketch of the history of such commissions, showing their essential difference in every respect from Commissions of Inquiry and all modern Commissions, see 12 Rep. 31, &c.

should be endued with a power of compulsion *either for the disclosure of facts or the attendance of witnesses*. The Address of the House of Commons, as the law now stands, can add nothing to their validity. It is true that the House of Commons claims a power to enforce, by means of its own privilege, the attendance of witnesses and the production of papers and records before its own Committees of Inquiry ; but it is also true that the House of Commons *cannot communicate that power to the Crown*. The known and lawful manner of inquiry into the misconduct of a corporation, or into the improper exercise of its franchises, is by information in the Court of King's Bench, which can only be granted upon some specific charge or to redress some specific grievance. But a Commission from the Crown, and the same may be said of a committee of either house of Parliament, for the avowed purpose of finding out matters of complaint against every corporation in the kingdom, if it were armed with compulsory powers [which all such commissions *assume to be*], would appear to me *liable to all the objections which were justly urged against the quo warrantos of Charles II., without even regarding, as they did, the forms of justice.*" Such was the opinion of Lord Abinger, most carefully considered and deliberately given. The opinion of Sir William Follett, though less full, is not less decided as to the illegality of such Commissions and of the powers which they assume. "I am of opinion," says he, "that municipal corporations are not compellable by legal process to furnish the information required by the Commissioners. I am not aware of any legal or constitutional power vested in the king which can enable him to compel

obedience on the part of any corporate body, or its officers, to Commissioners appointed under such a Commission as this."

While the general principles which have been demonstrated in the two preceding chapters will have satisfied every honest man that the opinions thus expressed by Lord Abinger and Sir W. Follett are in precise conformity with the fundamental laws and institutions of the land, it is curious, and very instructive, to observe how, on every occasion when, at former periods of our history, Commissions of Inquiry have been attempted to be issued by the Crown, they have, when attention has been called to them, been pronounced to be illegal in the most solemn and formal way. Many express statutes to this effect might be quoted. It will be sufficient to refer the reader to Lord Coke's observations on this subject in numerous passages already cited; to his readings on the Statute of Gloucester (2 Inst. 280, &c.), in which he makes just allusion to the *covert designs* of "some innovatores in those dayes;" to his readings on the Statute of *Quo Warranto* (2 Inst. 495, &c.); as well as to the very strong terms in which he condemns all such Commissions in his 4th Institutes (p. 163),— where he says expressly, "Commissions are like to the king's writs; such are to be allowed which have warrant of law and *continual allowance* in courts of justice. For *all Commissions of new invention are against law* until they have allowance by Act of Parliament. *Commissions of novel inquiries are declared to be void**. Commissions to assay weights and measures (being of new invention) are declared to be void,

* By stat. 18 Ed. III. cap. 1 and cap. 4.

and that *such Commissions should not be after granted.*" Finally, in a case which occurred two centuries and a half ago, and which is exactly analogous to modern Commissions of Inquiry, having originated in some sentimental philanthropy or procrustean schemes of that day, of course quite infallible, as to population and modes of tillage,—it was, in the fifth year of James I., solemnly adjudged by the two Chief Justices together with seven of the puisne judges "THAT THOSE COMMISSIONS WERE AGAINST LAW." And it is a most interesting proof of that strong foundation of *principle* upon which our common law rests, that, while those Commissions were declared to be against law on certain technical grounds (as they are at this day on even more), other reasons were, at the same time, expressly assigned which go to the bottom of the *principle* upon which all such Commissions, whether under the nominal sanction of an Act of Parliament or not, must always be essentially illegal and pernicious, and such as no free people or nation of justice-loving men ever can endure. Among the reasons thus assigned were these two: "*For by this a man may be unjustly accused by perjury, and he shall not have any remedy. Also the party may be defamed, and shall not have any traverse [or opportunity of answer] to it*.*" Any man may comprehend such plain matters of simple justice and honesty, and understand that, as it is the special characteristic of all Commissions of Inquiry to adjudge, and therefore, when they please, to accuse and defame, without giving opportunity of answer to the party accused or defamed, it is the duty of every honest Englishman to raise his voice against, and in-

* 12 Rep. 31.

sist on the immediate abolition of, all such Commissions ; and on the passing of a declaratory statute by which the whole system shall be unequivocally condemned and prohibited.

These remarks and authorities bear equally upon every other case of Commissions of Inquiry, as upon that particular Commission which has immediately led to them.

Among the numerous Commissions which have been made use of to impose onerous taxes on the people and to find patronage for government, and which, indeed, can merely be regarded as settled jobs, is the Criminal Law Commission. This Commission has now existed for more than fifteen years, and, as those connected with it are well-paid, there is no doubt that it will exist for fifteen more, unless the whole system be exploded before that time. The job has, as appears even on the face of this deceptive return, cost the tax-payers of this country £47,215 19s. 3d. If that amount is doubled it will, as before shown, be nearer the mark. And for this sum what has been done? Nothing at all to the *object professed* in the appointment of the Commission. That object would have been better fulfilled, and in less than one-tenth the time, and certainly at less than one-twentieth the cost, by any single man with his heart in such an important cause, with a clear head, and guided by some notion of principles. As it is, we have a comfortable sinecure of £800 a year enjoyed by several gentlemen ; and the sheer jobbery of which is so flagrant, that the Parliamentary Committee, which touches these matters very tenderly, is forced to say of the *cestuique jobs* that “ they think £800 per

annum for work performed at their leisure hours a large remuneration, and request the attention of the government to urge a speedy termination of their labours *."

The Constabulary Force Commission must be noticed for two reasons. *First*, it is a striking instance of the way in which these Commissions are packed to suit a special object. This Commission was established for the avowed purpose of "inquiring as to the *expediency of establishing a Constabulary Force* in England and Wales." Its very name contains the avowal of an intention on the part of government to attempt the establishment of such a force, in open violation of every principle of English law and every fundamental law and institution of the land. A Commission is appointed to manufacture evidence in support of such a gross outrage on the liberties of the people and the law of the land. Of the three Commissioners appointed, two were men, however honest and honourable they might be, whose foregone opinions, interests, and modes of thought were well known to be entirely devoted to the centralizing system, and who, without either of them possessing any of the qualifications necessary to the investigation of such a question (which required an intimate knowledge of the laws, history, and institutions of the country), were already committed to a certain mode of viewing this particular subject. Thus it could be relied on, with perfect security, that none but similitudes would be brought up. But notwithstanding all the care thus taken to secure the desired result by means of this packed Commission, the case is so hopeless a one that little evidence

* Report on Misc. Exp. p. xxxvi.

has been able to be manufactured though twelve years have elapsed. Of that which has been manufactured, in the only "Report" which this Commission has ventured to print, the nature may be judged by the following quotation from the article which has been already twice cited. "Having mentioned the Constabulary Force Commissioners' Report," says the writer*, "we may add, that it abounds with statements of a most startling description; and we once heard an individual, who had had the best opportunities of knowing all the mysteries attending the getting up of such Reports, exclaim, as he turned over some of its pages, 'Lord bless me, what a lie this is!'"

But, *secondly*, it is stated on this Return as an excuse why this Commission has not done what it was intended to do, that the time of all the members has been so much taken up "from their other public engagements!" It is of no importance whether that is the true reason or not. But what a satire the very assigning such a reason is on the whole system of Commissions of Inquiry! Many learned writers have discussed whether the whole duty of government is not the protection of the public against force and fraud. That duty cannot, it is true, be expected to be much to the taste of a government which employs *Commissions*. But here is a Commission appointed on the 20th of October 1836 on the subject of the Constabulary Force,—of all things the most important, if at all so, in what relates to vulgar force and fraud. And the members of this Commission coolly tell us, on the 6th of June 1848, that they have really been so very busy that they have

* *Jurist*, 22nd July, 1848.

not been able to attend to the matter ! Unhappy England, that for twelve long years she should have been thus deprived of the inestimable blessing of being ridden rough-shod over by the hired myrmidons of government, and of every corner of the land being brought under the direct surveillance and armed control of the immediate dependents and creatures of the Home Office !

Although all Commissions of Inquiry are, of necessity, equally illegal, there will, of course, be very different degrees in the extent to which truth is outraged by them, and mere *ex-parte* or manufactured evidence foisted on the public in the place of truth. In spite of every careful provision to the contrary, some particles of truth may, sometimes, find their way even to the pages of the " Reports " of such Commissions. Such are really illustrations of an apparent exception* proving a rule. But it will always happen, under such a monstrous system, that, even in such cases, the mischief will show itself. A better illustration perhaps could not be taken than the Law of Marriage Commission. It is difficult to see, beyond the immediate job itself, any ultimate design in this Commission by which Patronage can be greatly increased. No doubt something of the sort will be attempted. But the people of England will hardly, *yet*, put up with Inspectors of Marriages and Commissioners

* I put the case thus because the common phrase that an exception proves a rule is a logical absurdity. A single exception must destroy any rule. An *apparent* exception will always strengthen a rule : in such a case the apparent exception will have arisen from *accidentals* only, not *essentials*. The pointing out of those accidentals will leave the essentials more clearly seen than ever, and so " prove the rule."

of Weddings. The Commissioners named in this Commission were more able men, and more capable of handling their subject, than is usual in Commissions. Yet we cannot turn over the leaves of the "Minutes of Evidence" and "Appendix" even of this "Report" without perceiving that there is a great deal of *anxious evidence* on one side, as to which a few cross-examining questions suggest themselves; and also that many documents and opinions are published which appeal simply to the *feelings*, and not to the reason, and which, therefore, ought to have been carefully excluded in any calm and searching investigation. The empirical law into whose operation this Commission inquires was an unwarrantable invasion of the most intimate sanctities of private life "by authority." Some individuals have had influence enough to procure measures to be taken, in the shape of this Commission of Inquiry, by which the empiricism of the whole system of modern law-making will be further shown. Those private sanctities are being thus now again meddled with "by authority," in the hope of getting that empirical law repealed.

When it is remembered that, whatever pretensions may, in order to deceive the ignorant, appear on the face of these illegal Commissions, *no Commission of Inquiry ever yet ventured to attempt the exercise of any power to compel the production of a single "Document, Register or Record,"* or to require the attendance of any single person in the kingdom who did not choose voluntarily to come, any reader, how unfamiliar soever with legal proceedings and philosophical investigation, must feel that, in the hands of the most honest and competent men, the attainment

of truth, under such a vicious system, would be impossible.

It would be difficult to point out which among these Commissions of Inquiry, have exceeded others in the amount of perversions of the truth of which they have been the means, and in the extent to which they have manufactured evidence to suit certain predetermined ends. It would hardly be supposed that a Commission to inquire "into the state and conditions of the tidal and other harbours" would have been thus ingeniously employed. But it has been so. So great has been the misrepresentation put forth through this means, that one important and *responsible* public body has felt it necessary to publish a statement of facts, which it has done with the names affixed, proving the untruths thus promulgated. In this case, as usual, Centralization was the object of the appointment of the Commission. The following extracts, the one from the beginning, the other from the end of the publication alluded to, are all that need be said upon the subject of this Commission*.

"Before proceeding to notice the various misstatements in the Report, it may be necessary to remark, that, judging from the experience which they had of the proceedings of the Tidal Harbour Commission in London, it appeared too evident that the object of the inquiries was less with a view of eliciting

* "Report containing Answers by the Clyde Trustees to the Report lately submitted to Parliament by Captain Washington, examining Commissioner of the Tidal Harbour Board." 1848, pp. 2 and 40. This Report of Capt. Washington is exactly an illustration of what all Reports and Inspectors, &c. will always be under Preliminary Inquiry Acts, Public Health Acts, &c.

ing facts, than of looking for circumstances which might support the scheme of having a Central Board for the control of Harbours, sitting in London.

“This is not the place for the proper discussion and consideration of the conduct of an officer, appointed to make a deliberate and impartial inquiry into the condition of the several rivers and harbours of the kingdom, in permitting himself to be converted into a partizan, and presuming to address the legislature in the unscrupulous terms and spirit of the Report under notice. No desire to establish a Central Board of Control in London, however much Captain Washington may be officially interested in the matter, can be fairly pleaded as an excuse for his conduct.”

Space will only allow allusion to one more of the Commissions comprised within the Return which has been named. That Commission is the Metropolitan Sanatory Commission. As it is one of the latest of the Commissions of Inquiry issued, so it offers one of the best illustrations of the vices of the system.

This Commission professes to have been appointed for the purpose of “Inquiring whether any and what special means may be requisite for the Improvement of the Health of the Metropolis.” Had such been, in any degree, the real object, care would have been taken to name upon it men who had a full knowledge of the existing law. There was not, however, any man appointed on that Commission who was familiar with, or who had indeed any knowledge whatever of, the law upon this subject.

It is one of the rules of the law relating to challenge, that any man who has, in any way, given a previous verdict in relation to the subject matter is in-

competent to serve upon a jury. The rule is founded on sound reason and knowledge of human nature, and does not cast any reflection whatever on the subjects of such challenge. As Commissions of Inquiry are, in every point, instituted and carried on in exact antagonism with every fundamental law and institution of the land, it will be anticipated that this, among other rules, would, where possible, be carefully violated. So we find it. Three members of this Commission, at the least, had already committed themselves, *under their hands*, to one set of views on the subject matter of the Commission. It was not in the nature of things that they should now contradict themselves. The pretence of an "Inquiry" by them was therefore a simple mockery.

There was indeed, among these Commissioners, one man named whose masculine understanding and truly philosophic spirit would lead him to seek the truth, and to find it, under almost any disadvantages, if only the time and means of examining the true facts were granted him. But he was already committed. It was, moreover, perfectly well known at the time of his appointment that those time and means were not at his command. His name, however, would give an authority to any reports of the Commission. That science has suffered from this circumstance, both in dignity and reputation, and consequently in influence, and that it must yet suffer more, is unquestionable. A generous mind, really desiring to see the amelioration of the condition of his kind, but actively and almost overwhelmingly engaged in important investigations and truth-seekings of another class, is obliged to rely on the representations of others, and on the

ex-parte evidence produced to him. It is his misfortune, and science's, that he should be placed in this false position; and no government had any right to place him in such a position. The investigations in which he is engaged, and to which the energies of his powerful mind and the wide range of his habits of thought are peculiarly adapted*, are too important in themselves to science, and therefore to human improvement, to be thus interfered with. So necessary indeed was it felt to be that only so much of the facts as would suit the particular object of the Commission should come before the notice of some of its members, that, instead of every means of information being sought, as, for the investigation of truth they always must and will be, means were taken to prevent even the ordinary channels of acquiring information, and of discussing the accidentals and essentials of the various facts, by the interchange of the ordinary communications with those who had carefully considered them. It were beside the mark to dwell on painful feelings and just indignation thus personally excited. As a mark of the fear lest the truth should accidentally be seen through the disguises carefully thrown round it the circumstances cannot ever be forgotten.

It is well known that this Commission very soon made a report†, and published minutes of evidence,

* Knowing the jealousies which exist in certain quarters, I am content to justify this language by reference to that masterpiece of close and logical scientific investigation, 'On the Archetype and Homologies of the Vertebrate Skeleton.'

† This report contains some tables which, if reliable, would have been valuable. But the falsification of some important particulars in them—helping the end sought, and reiterated after they had been pointed out—has disintitiled them to confidence. Much matter of

highly condemnatory of all existing Metropolitan Commissions of Sewers ; and that the Commissions they condemned were thereupon forthwith ousted, and these, their judges, appointed, with a few others, in their place. Never was more fully realized Sydney Smith's observation as to those who "*praise themselves indirectly by an accusation, and benefit themselves directly by the confiscation founded on it* *."

Those Metropolitan Commissions were not condemned on complaint and evidence, and after a hearing and reply. They were condemned simply to open the door to centralization. If evidence on which they ought to have been condemned exists, it has not yet been produced to the public. The greater part of the so-called evidence produced was that of some of the dissatisfied servants of those Commissions, who, in the absence of their masters, and without any opportunity being given to the latter of any cross-examination or reply, made statements which will naturally be expected not to be very favourable to the characters of their employers ; though they by no means neglected the opportunity to exalt their own merits. What would be thought of such evidence in any court of justice ? But they have had their reward. They immediately got snug births under the new Commission. Such

interest as to the cholera,—though totally beside the professed object of the Commission,—is also contained in the first and second reports. But it is impossible not to feel that no confidence can be placed in them as exhibiting more than only *one side* of the question. The third report is an attempt at exculpation from blame for the grave effects produced by putting into practice the empirical schemes before recommended : in which attempt it entirely and signally fails.

* First Letter to Archdeacon Singleton.

are the baits held out by Commissions appointed to "inquire for grievances." Those who resist the temptation deserve all respect.

Great was the horror of this Commission at the circumstance that the old Commissions of Sewers had occasionally dined. But though thus filled with virtuous horror at the idea of a dinner eaten by others, none has been felt at accepting for themselves "*Compensation*;" and that to an amount which throws all the dinners ever held by all the old Commissions of Sewers put together far into the shade. It appears by the Miscellaneous Votes that no less a sum than £2500 has been already actually appropriated for *half a year's salaries for the members of this Commission* and certain mysterious "assistance."

Not very long ago the world was amused by a very laconic letter from Lord John Russell, acknowledging the receipt of a communication in which the writer is said to have intimated his "intention of violating the law." On the face of the before-named Return as to Commissions of Inquiry we have a far cooler intimation, from one enjoying Lord John Russell's patronage, of the deliberate intention of Lord John Russell's government to violate the law. We are told in Appendix N. to that Return, that the members of this Commission have had no salaries appointed, "*but it is UNDERSTOOD that Allowances will be made.*" That is to say, government have intimated to these gentlemen their intention of quietly putting their hands into the pockets of the people, without thinking of asking the leave of the said people, in order to help these gentlemen to the cash. And sure enough among the Votes hurried through parliament at the close of last

session, we find the following in relation to this Commission :—

“ Remuneration to one Commissioner	. .	£300
Ditto ditto	. .	200
Ditto ditto	<i>at the same</i>	
<i>rate as his former salary as Secretary</i>		
<i>to the Poor Law Commission</i>	. . .	600
Ditto to the Secretary	. . .	200
		<hr/>
		1300
<i>Extra professional assistance, and other ex-</i>		
<i>penses of the Commission</i>	1200
		<hr/>
		£2500.”

This really exceeds even what experience of whig jobbing might have rendered credible. This Commission, instead of having cost £717, as falsely stated in the before-named return,—which was not printed till late in August 1848,—had, *before that date*, cost this gullible nation, as already shown, at least £4258, or, as it appears, though shame has led to an attempt to conceal it, £5000 *. And all for what purpose? To get up a case for increasing government patronage, and the more effectually to reduce the faculties of the whole people to a state of half-development, and their condition to that of a “herd of animals.”

If such Commissions were legal and wholesome things, instead of being simply illegal and pernicious, it would not only be not improper, but would be right and only just, that the members should be paid. The point is, that here is a body having no legal appointment, and engaged only in open violation of the law, to the illegality of calling which into existence go-

* Report on Misc. Exp., p. xxxvi.

vernment deliberately adds by taking money out of the pockets of the people to pay it for what is thus illegally as well as mischievously done. No wonder that we are told by the paid secretary of this Commission,—and appointee under several other centralizing jobs,—that “it is impossible to name the probable date at which the labours of the Commission will cease.” The coolness of this last observation was, however, too much even for the politeness of the Committee of the House of Commons, which was so much struck with the undisguised jobbing for which this Commission was made the machinery, that it very properly “suggests for consideration whether it would not be much better that this and similar Commissions should receive a certain sum for the whole of their labours, instead of an annual payment*.” Piece-work will, no doubt, be better than jobbing; but it may be “suggested for consideration” whether it will not be still better for the government to set an example to the people of England of respect for the law and obedience to its requirements. So will these illegal Commissions, and all their mischiefs and their jobbing, be swept altogether away, and the faculties of the people, as well as their pockets, have a better chance of being well-developed.

But the above document calls for two further remarks. Upon what ground is it pretended to give “remuneration to one Commissioner ‘at the same rate as his former salary as Secretary to the Poor Law Commission?’ ” Because a man is dismissed from, or obliged to resign, one employment, does that give him a claim to put his hands into the pockets of the

* Report on Misc. Exp., p. xxxvi.

employers to whom he did not give satisfaction, and help himself to their cash? Had the conduct of the individual been as satisfactory in that office as it was unsatisfactory, the amount of the salary of that office can have nothing whatever to do with another employment having no connection with it.

The salary thus paid to a member of a Commission whose friends have been boasting how much it has done for *nothing*, is enormous in itself, supposing the work were a legal and useful one; but for which neither the amount of work actually done nor the nature of it can afford the slightest ground of justification whatever. A grosser job than this was never perpetrated; and it is done in a way which seems as if it were deliberately intended to insult the public understanding and to treat its opinion with open contempt.

But what are the "professional assistance and other expenses of the Commission—£1200"? This is a very easy shape of concealing moneys squandered in a way that will not bear the light. We are often loudly told by some members of this Commission of the saving they will effect if we will only hand over our purses and property to their care and keeping. But never yet have those parties intermeddled in anything without showing that any saving was the last thing that would be seen; that jobbing and patronage were the real things which would flourish under their care; that, in the words of Lord Coke, "*New things which have fair pretences are most commonly hurtful for the common wealth; for commonly they tend to the grievous vexation and oppression of the subject.*"

Besides what any man may see who looks over the pages of the printed "Minutes of Evidence" taken

before this Commission,—glancing, too, as he turns the pages over, at the conclusions carefully sought to be conveyed by the *running title* at the head of each page,—I am enabled to speak from personal knowledge of the way in which *ex-parte* statements are foisted on the public by such bodies, and in which “evidence” is manufactured. On the 28th of April, 1848, I was examined for upwards of five hours before this Commission. It must not be supposed that this was a voluntary act on the part of the Commission. Desiring to avoid personal matter I will only say that circumstances rendered it impossible for the Commission to avoid asking me to be examined*. The examination was so conducted that I felt it absolutely necessary on the following morning to protest against it “as at variance with the spirit of impartial inquiry, and calculated to present an erroneous view of my statements and conclusions.” The determined attempt, from beginning to end, was to extract admissions in support of the *ex-parte* case eagerly sought to be made out. *I was stopped, rudely and peremptorily, when I sought to explain points on which artfully framed questions would necessarily lead to a misunderstanding of my reply without explanation.* I have already stated, publicly and in print, and the statement has had a wide circulation, that “I had certainly not before conceived it possible that, under the name of an ‘inquiry,’ an examination of a witness could, vicious

* On the 26th and 28th of April I had published in the *Morning Chronicle* exposures of some of the gross falsehoods manufactured, and sent forth to the Members of the House of Commons (though not by this Commission itself), for the express purpose of forwarding the passing of the Public Health Bill. Though my name did not appear the author was well known to those whom it concerned.

as the system is, be made so entirely *ex-parte*, and so completely calculated to smother the truth, and prevent its full and fair investigation. No retained counsel, with counsel on the opposite side to cross-examine, would be allowed by any judge to put such directly leading questions, and to attempt such an entire prejudicing of the case to the jury and the public, by laying down, under the name of ‘questions,’ absolute propositions and positive allegations relating to the very subject-matter of inquiry. The want of power of perception of logical connection, and of that first essential to the discovery of truth—the clear apprehension of the difference between accidentals and essentials,—was, in the greater part of the questions asked, as marked as was the want of any real knowledge of the subject ; both which wants were supplied by a very unhesitating begging of the question upon every point*.”

In the publication from which these words are quoted, I have exposed the hopeless ignorance, which it is impossible for any terms too strongly to characterise,—for I will not suppose the only alternative of wilful misrepresentation,—manifested by the questioner as to all the more important points relating to the subject-matter. To that publication I must take the liberty of referring the reader for full illustration of the style of questions put by the Commission.

Among the “questions” asked me,—that is, the statements laid down as matters of fact, and intended, as so laid down, to go before and influence the public,—were certain ones as to the knowledge which ex-

* Letter to the Metropolitan Sanatory Commissioners, &c., p. iv. 2nd edit. See extracts from this examination at the end of Chap. III.

isted in Liverpool and Manchester of the statistics of those towns. It was expressly stated that both towns believed that they were pre-eminently healthy. These statements (it would be a farce to call them questions) were made in order to strengthen the case, to the making out of which every question was directed, against all municipal institutions and local self-government. It will hardly be credited that the very person who put these statements before me with the object of drawing from me admissions unfavourable to local self-government, and of leading others to the same conclusion, was himself present, several years ago, when, in one of the towns thus specified, the statistics of the town were carefully detailed and very accurately shown*. I was not aware of this fact at the time of my examination, nor until some time afterwards, when, happening to be alluding, in presence of a friend, to the course of my examination, he informed me, with strong expressions of indignation, that he *was present on the occasion alluded to*, and can prove that this very questioner was then present also.

The art of manufacturing statistics to suit any view of any case is a very easy one. It is one to which no one will resort who is conscious of any earnest truth; and the very parade of those statistics will always make the earnest inquirer after truth suspicious of the conclusions attempted thus to be supported. Such statistics are the special delight of the Metropolitan

* The reader who wishes to see whether or not a Government Inquiry is necessary for any other purpose than to *manufacture* statistics, may usefully consult the several Reports of the British Association. I would now refer especially to the volume for 1837, p. 141, &c., and that for 1842, p. 87, &c.

Sanatory Commission, and of others having the same object and tendency of universal centralization and systematic jobbing. Hence their dread lest those who have the best opportunities of verifying statistics should take upon themselves to do so. It is like every thing else in which local self-government is concerned. For the objects of centralization it is absolutely essential that no men be allowed the use of any of their faculties, except so much as may kindly be granted to them "by authority."

One more point as to this examination and I have done. It is usual, and clearly necessary, that parties examined before Committees of the House of Commons, whose proceedings these Commissions so far apace, should have an opportunity of revising their evidence after it has been taken down and printed. I was specifically promised this opportunity at the time of my examination. I waited a long time for the proof in vain. I wrote more than once to remind the Secretary of it. After waiting some weeks I wrote to Lord Morpeth on the subject, and this at length brought the proof. When it came I found, as I expected, that there were many striking and very material misrepresentations of what I had said; some questions and replies of importance altogether omitted. I have not the least idea that this is to be ascribed to any intentional alteration. I am aware of the difficulty of catching exactly every expression of a speaker, and especially, perhaps, in the circumstances in which I was placed, under a five hours' attempt at badgering and brow-beating which it required some coolness to meet, and which it would be not a little difficult for a short-hand writer to follow. But I state an im-

portant fact ; namely, how little of the real expressions of any witness can ever be conveyed by these so-called "Minutes of Evidence," unless after careful revision. I will only add that, though I sent back the proof copy, corrected, with all despatch, and asked to see a revise, no revise has ever yet been sent to me. As my evidence, however, will by no means suit the objects of this Commission, it is not very likely that it will ever be honoured with a place in their "Minutes of Evidence."

It is impossible to leave the Metropolitan Sanatory Commission without some allusion to a document put forth, early in the last session, and in aid of the same object as that Commission was appointed to forward ; namely, a "Report of a Sub-committee of the Health of Towns' Association." This document is perhaps one of the most remarkable instances ever exhibited of the gross scurrilities and disregard of every decency to which partizanship and self-interest will lead. There is hardly a statement in this Report which is not false, certainly not a paragraph which does not contain many gross misrepresentations. Unblushing falsehood and insolent scurrility are the weapons here employed as alone adapted to aid the projects of a centralizing government. All who differ are denounced as "ignorant, conceited, obstinate, corrupt and obstructive," and accused of "ignorant and arrogant pride." No greater affront than this Report was certainly ever offered to decency and honesty by unscrupulous and hungry partizanship. Whether there was any connection between the authors of this sub-report and any of the members of this Commission I would desire not even to inquire. It is enough

that it was published to promote the same object which that Commission strove to promote ; that precisely the same spirit pervades,—nay, even some of *the same turns of expression* are made use of in,—that report, as run through questions asked of me in the course of my examination.

The enormous amount expended and expected to be expended by this Commission in printing has been already seen. It has been also seen that books are intended to be issued by the Board of Health, and that provision is already made for the publication of these “by authority.” Any surprise which might naturally be felt at this extravagant expenditure and these preparations for publication will be removed when it is found that this very Metropolitan Sanatory Commission,—a Commission whose object was professed to be for inquiry “whether any and what special means may be requisite for the improvement of the Health of the Metropolis,”—has already started in that line, and taken upon itself to publish a pamphlet by a private physician ; and that pamphlet, too, not having the remotest connection with the metropolis or the improvement of its health. The work whose publication has thus been so kindly undertaken [*at the public expense*] by this Commission is “Observations on Asiatic Cholera during a residence in St. Petersburg”!! by Dr. Crowther. It is by no means remarkable that the eyes of this Commission should be turned with fond affection to St. Petersburg, as the chief home in Europe of that despotism, that “half-development of the faculties,” and that “degradation of slavery,” which it is the ceaseless aim of the Whig Government to establish in this country by means of Cen-

tral Boards, Inspectors, and Commissioners. But it would have been prudent to have had a little more regard for appearances than thus to take money out of the pockets of the people of England to print and publish and circulate a pamphlet, the object of which is to exalt and bepraise the system of things in St. Petersburg in general, and the flogging specifics by which the Russian autocrat keeps his "herd of animals" in order in particular; and so to excite the fond longings of the British public towards the state of things which exists in that happy land.

The infallibility of the Metropolitan Sanatory Commission has received a sad blow by the publication, within a few weeks, of the carefully prepared report of three of the most eminent engineers in Europe, Messrs. Walker, Cubitt, and Brunel, on the Sewers within the City of London. All the sewers of the metropolis, which really constitute perhaps the greatest wonder of the world, and are a just source of pride to the inhabitants of the metropolis, had been recklessly proclaimed by this Commission to be bad, extravagant, and disgraceful,—because they did not happen to have been built, through all past ages, according to the procrustean notions of certain individuals who put forward certain theories in the year of grace 1847. They are specially pronounced, in the usual sweeping and magniloquent terms of one of the reports already alluded to as published "by authority" of the Poor Law Board, to be "a vast monument of defective administration, lavish expenditure, and extremely defective execution." In the report of Messrs. Walker, Cubitt, and Brunel, which is singularly impartial, the folly and absurdity, as well as

the presumptuous ignorance, of the judgements and recommendations of the Metropolitan Sanatory Commission are well exposed, and the mischief pointed out,—which cannot be exaggerated, either as to cost or health,—which will follow from an adoption of them. It is shown that some most important points have been altogether overlooked, while pedantic blunders* are vaunted as the one thing needful. It is also shown, what is obvious to common sense, that many of the remedies urged would be a mere means of saturating the atmosphere with poison. The public and the House of Commons must indeed have become subservient to the centralizing influences of government if the mischief and perniciousness, as well as the illegality, of such Commissions of Inquiry are not fully appreciated after such an exposure.

Did it seem necessary to add any thing further in order to show the illegality and mischiefs inherent in all these Commissions, attention might be directed to the very comfortable system of jobbing within jobbing for which these Commissions afford every opportunity; and which is not omitted to be availed of. Something of this has been already seen. But, besides that enough has been said to show their illegality and mischievous-

* One of the most important of these is the profitable *glazed pipe* speculation, so admirably puffed in the reports of the Commission. I had already pointed out, in my "Laws of England relating to Public Health," (published in February 1848,) a "radical defect" in these pipes. That defect is the one on which Messrs. Walker, Cubitt, and Brunel so properly dwell; and the overlooking such an obvious defect is a fine illustration of the infallibility of these self-lauding teachers, who presume to pronounce works which they cannot understand to be "monuments of defective administration, lavish expenditure, and extremely defective execution."

ness, the entering at large on this point would involve direct personal allusions which it is desired to avoid. All that has been said has reference to a *system*; of which those who are actors in it are, oftentimes, as much the unconscious as the willing abettors. The whole subject is indeed any thing but exhausted by what has been said in this chapter. Nay, the ground is barely broken. It will be an unwilling task, but one that will not be shrunk from, should it hereafter be necessary to go more deeply into it. The only excuse which can be made for any Commissions of Inquiry, especially such as have now had special attention called to them, is the same which Ledru Rollin and his partizans have made for their proceedings:—namely, that what they choose to assume is best for the people must be forced down the throats of the people if they do not see it without. The measures taken in the two cases are, in every respect, of the same character.

Not content with the numerous and costly Commissions of Inquiry which had been already illegally issued, the government has lately been making further efforts to control every local energy and enterprise, and to reduce all under subjection to the pernicious spirit of Centralization, by a wholesale system of Local Commissions of Inquiry whose only possible end can be jobbing and the increase of patronage.

Few people are probably aware that, under the plan already noticed of smuggling acts through parliament, an Act of Parliament was deliberately prepared and hurried through parliament, unheard of, two years ago, (9 and 10 Vic. c. 106,) the object of which was to abrogate the functions of parliament, to a great extent,

by prohibiting any application to parliament, on a wide and most important range of matters of public enterprise, without having first given notice to the Commissioners of Woods and Forests, who were thereupon to appoint a Commission to inquire into the subject-matter.

It must be evident to every honest man that such a system is as illegal and pernicious as any part of the Commission system. The fact of an Act having been smuggled through parliament cannot make that legal which is in diametrical opposition to the very first principles of the laws and institutions of the land ; in direct antagonism with the foundations of the national union ; and repugnant to the commonest notions of justice and right. This last attempt did indeed contemplate the concentration of packed juries and legalized jobbing. An enormous expense, "prominent" even among other vast expenses, has been thus entailed on the country*, and the only result has been increased jobbing ; a more eager scramble for the "selfish prizes and petty vanities of office ;" and thus the more inuring of the minds of the people to the "degradation of slavery," and the more open violation of the fundamental laws and institutions of the land. The reports of these Commissioners are treated by the House of Commons with the contempt they deserve ; hardly a single instance having occurred,—I am assured by a well-known member of the House that not one has occurred,—in which the House has condescended to take such *ex-parte* statements as its guide. In this it better protects the rights and liber-

* Evidence before Select Committee on Miscellaneous Expenditure, query 899.

ties of the people than when it consented to the Bill which authorizes these additional items of jobbing and government patronage.

On the 14th of April 1848, Mr. Milne, one of the Commissioners of Woods and Forests, stated, before a Committee of the House of Commons*, that he did not consider the system of these local inquiries useful; that its use would depend entirely upon the credit which committees of parliament may give to the reports of the surveying-officers [and which they have, very properly, never yet given]; and that such a duty was "quite unconnected with the business of the Office of Woods." Notwithstanding this expression of opinion, and in the face of the very proper treatment given by parliament to the reports themselves, a bill was, at the end of the last session, 14th August 1848, brought in, nominally by *Mr. Hume* and *Mr. Cobden*, for the still further abrogating of the functions of parliament, legalizing of jobbing, and increase of government patronage, by extending the system of the 9 & 10 Vict. c. 106. And that bill was, in the hurry of the closing session, contrived, with some alterations, to be smuggled through parliament, and now stands upon the statute-book. There is one little circumstance connected with the names which backed this bill, which painfully shows the effect of the engines which all this increase of patronage enables government successfully to employ to sap the foundations of the liberties of the people and the laws and institutions on whose permanence the maintenance of those liberties depends. *The son of Mr. Hume*, one of these backers, was, on the 1st of March 1848, appointed by govern-

* On Miscellaneous Expenditure, queries 2814, &c.

ment to *more than one of the births* under the former Preliminary Inquiries' Act. The same gentleman also figures in the return of Commissions of Inquiry as Secretary of the Mint Commission, which was appointed on the 15th of February 1848! So much for the influence of the "selfish prizes and petty vanities of office." Mr. Cobden probably allowed his name to be used without any knowledge of the real objects of the bill, and without even considering that no such attempts against the independence of parliament, or so dangerous to the liberties of Englishmen, were ever made in the days of the Tudors or the Stuarts, as are thus being made by a pretended "liberal" government, under cover of Commissions, Preliminary Inquiries' Acts, Inspectors, General Boards, &c. &c.

As Mr. Cobden has pledged himself to financial reform, it may be well to direct his attention to the enormous item in the expenditure which these illegal Commissions make. This has been already shown to some extent*, though to an extent trifling in comparison with the actual cost which they entail. The pounds, shillings and pence view of the subject is the lowest that can be taken. But it is, nevertheless, one of very great importance, and one, moreover, which will alone, before long, compel the public to fix attention upon the whole system. A just indignation will then be poured upon the authors and upholders, for their own selfish ends, of a system as corrupt as it is illegal, as pernicious as it is costly.

To return to the Preliminary Inquiries' Act. In a matter so obvious as that the truth can never be elicited by such a method of "Inquiry," it is needless

* *Ante*, p. 195.

to cite special illustrations. One case has, however, come to my knowledge bearing so directly upon this system of manufacturing evidence, that I feel bound to mention it. Among other witnesses examined in respect to the Woodford Metropolitan Cemetery Bill was Dr. Marsden. That gentleman had already answered several questions, when some were put to him on the subject of the effect of burial-grounds upon wells and springs. The answers he gave did not accord with the cue. Facts and foregone conclusions were at variance. The shorthand writer received significant hints that those answers need not be taken down; *and those answers do not appear in the minutes printed to be laid before parliament*, and by which the intention of the authors of the Preliminary Inquiries' Act is that it shall be dictated to parliament what course to adopt. Such is a fair illustration of the necessary working of a system so illegal and pernicious as the Preliminary Inquiries' Act; and which is every day being anxiously endeavoured to be carried still further. An exactly similar device of pretended "Inquiries" forms a prominent part of the (so-called) Public Health Act*.

It is well known that a bill was last session brought in by government to extend even yet further this system of patronage and jobbing, under pretence of inquiry into election cases. Fortunately for the independence of parliament and the liberties of Englishmen, so far, this illegal, but consistent, attempt did not succeed in being forced through the House of Commons.

* See also Lord Abinger's opinion as to "*roving Inquiries*," before, p. 203; and see before, p. 212.

It is to be earnestly hoped that, before another session shall have passed, parliament and the nation will have become somewhat alive to the importance, as well to the maintenance of peace and good order, as to the securing of the permanent prosperity and future progress of the people, of insisting on respect for and obedience to the fundamental laws and institutions of the land by whatever party or men may be in power ; and of insisting on the entire and immediate abolition of that iniquitous, illegal, and most pernicious system which is now being made the instrument for increasing government patronage to an indefinite extent ; for legalizing jobbing under every possible shape ; and for depriving the people of those institutions, and of the benefit and protection of those laws, which are their noblest inheritance and best birthright, the badges of their freedom, the only guarantees of prosperity and progress. Let it ever be remembered,—and never cease to be repeated till the system is cut up by the roots and publicly branded with the infamy it deserves,—that the greatest lawyer that England ever produced declares that “ COMMISSIONS OF NEW INQUIRIES, OR OF NOVEL INVENTION, ARE AGAINST LAW, AND OUGHT NOT TO BE PUT IN EXECUTION.”

CHAPTER II.

OF ADMINISTRATIVE COMMISSIONS.

"Government does not cease to be absolute merely because the sovereign exercises his authority through certain functionaries appointed by himself."—Lord Brougham's *Polit. Philos.* iii. p. 3.

"New things which have fair pretences are most commonly hurtful to the Commonwealth: for commonly they tend to the GRIEVOUS VEXATION and oppression of the subject, AND NOT TO THAT GLORIOUS END THAT, AT THE FIRST, WAS PRETENDED."—Coke, 2 Inst. 540.

THE essential qualities of all Crown-appointed Commissions are the same. All are equally illegal and equally pernicious. It would, then, be mere repetition to go over again in this chapter the points noticed in the last. It was there shown specifically in what respects all Commissions "*of new inquiry or of novel invention* are AGAINST LAW," and an open violation of those Fundamental Laws and Institutions which have, in the former Book, been seen to have been provided as well for the maintenance of the body politic as for the protection and felt security of the rights and liberties of persons and properties. It was further shown how the favour with which such an illegal and mischievous system is regarded by many is to be explained. Both classes of observations apply to the subjects of the present chapter equally as to those of the last. The one main point in which, and in which only, these Commissions differ from those

is that, in the case of these, there has been the attempt made to give them an appearance of legal sanction by Acts of Parliament recognising and endeavouring to enforce them, and by which their means of immediate and active mischief have been undoubtedly increased. It will be well then briefly to consider, first, what real legality is thus imparted to them, and then to pass on to give a few illustrations of the actual working of some of them.

In the second chapter of the former Book it was shown at some length that the existence of certain fundamental laws and institutions, recognized as such, is absolutely necessary to any national union, and to the security of any of those rights of property on which depends the possibility of enterprise, and consequently of improvement, individual and national; and, therefore, of a steady political and social progress. It cannot be necessary to go over that ground again; but, to avoid repetition, the reader's careful attention is especially called to the arguments there advanced.

It was there shown that, and why, those fundamental laws and institutions are necessarily superior to any Acts of Parliament, and that the latter can never make *that* lawful or wholesome which the uniform tenor of those fundamental laws and institutions has branded as illegal and pernicious. It was not there, nor is it here, pretended to be denied that Acts of Parliament have been and may be made which do set at nought those fundamental laws and institutions, and which do succeed in compelling obedience to open violations of them. But it was, and is, affirmed that such has ever been done, and is now being done, by

the right of the strongest only, and in defiance of those higher sanctions which morality commands and has given to superior laws, but which she looks to *time* only, and not to *force*, to vindicate. A writer who has been already quoted remarks with the greatest, though with very painful, truth, that “ Experience proves that the depositories of power, who are mere delegates of the people, that is, of a majority, are *quite as ready as any organs of oligarchy to assume arbitrary power*, and encroach widely on the liberties of private life*.” Such acts, then, can only be classed with the forceful deeds of the Williams, the Edwards, and the Henrys; by which they violated the fundamental laws and institutions of the land, and which violations made it necessary, from time to time, that those ancient and fundamental laws and institutions, *the badges of the nation’s liberties*, should be redeclared. Parliament, the great council of the nation, has oftentimes been the watchful and jealous guardian of the people’s rights and liberties. It is liable to err and to be misled, especially under such a system as that of Commissions, which allows a place within its walls to so many who are personally interested in the preservation of abuses and the continued violation of the laws and institutions of the land. But it is as idle folly, and as little the part of the well-wisher of his country, to depreciate, on this account, the importance of, or the respect due to, parliament, as it is criminal in any one to despond and despair of the condition of the country because, at any time, corruption or abuse or evil counsels may have attained to a pernicious height. It is maintained to the fullest ex-

* Mill’s Polit. Ec. 11, p. 508.

tent that such Acts of Parliament as have been alluded to have been direct violations of the trust reposed in parliament; were acts which it had no power to pass; and which, being in violation of the fundamental laws and institutions of the land, are in themselves "*void and to be holden for nought**." But it is to parliament that we must look for recognizing these truths, and acting on them; and it is the duty of every earnest wisher of the well-being of society and of human progress, not to cry out for political panaceas which will necessarily end in disappointment, *but to strive themselves to understand thoroughly, and to afford the full means to others, in and out of parliament, to understand*, what those fundamental laws and institutions are which are being thus so perniciously violated. It is again†, and cannot be too often, repeated that it is this *knowledge* only which is necessary in order that the evil shall be remedied. Empty declamation, and appeals to prejudice or passion, will never do it, and will never help the cause of true human freedom or of human progress.

It was shown, in the chapter alluded to, how the empty *forms* of parliament have been made use of, in evasion of the very principle, and of the true function, of parliament itself, for purposes of executive usurpation. Parliament itself must be appealed to to prohibit such a contempt of its office and function, such an evasion of those objects for the fulfilling of which alone it exists; and unless it fulfil which it becomes but a mere empty mockery, and the representative of anything rather than "*the common consent of all the realm*."

* 25 Edw. I. c. 2.

† See p. 44, note.

And in reference to the subject-matter of the present chapter, as in other cases which have come before us, we are not without opportunity of learning how our fathers acted, when, in like manner as now, the fundamental laws and institutions of the land had been violated under colour of the ordinary legal forms and sanctions ;—and when *time*, that vindicator of the higher moral sanction on which those fundamental laws and institutions depend for their supremacy, had asserted that supremacy, and required its recognition, and that parliaments and all executive expedients should bow before it.

In each of the instances which shall now be cited it is very instructive to note that the proceeding had recourse to was, not the making of a new law, not a botching-up or “amendment” of that which, under different forms of the highest ordinary tribunals of the country, had been put forth as law. The course adopted was a declaration that those pretended enforcements of certain matters as law were NOT LAW, that they were distinctly AGAINST LAW ; that is, they were against, and in violation of, that law which is the fundamental law of the land, and by which, as *principles*, all Acts of Parliament ought to have it as their only object, carefully and with the utmost caution and consideration, to frame what regulations may be necessary for their *adaptation* to the varying circumstances of the time. And thus it now happens that, when any case decided in any of the courts of law is, at any future day, after much consideration, determined to have been wrongly decided, the former decision, though it may have prevailed for many years, is never stated to have been *bad law*, but that it was *not law*.

The supremacy of the Fundamental Laws over all the highest ordinary tribunals in the land, whether of the common council of the whole nation or of administrative justice, has in fact been repeatedly thus recognised. “Albeit,” says Lord Coke, “judgements in the king’s courts are of high regard in law, and *judicia* are accounted as *juris dicta*, yet it is provided by Act of Parliament that if any judgement be given contrary to any of the points of the Great Charter it *shall be* UNDONE AND HOLDEN FOR NOUGHT.” And again he says that “if any *Statute* be made contrary to the Great Charter THAT *shall be* HOLDEN FOR NONE*.” And it is well it should be so. Nothing can be so great a protection against feverish discontent and revolutionary appeals as the consciousness impressed firmly on the minds of all,—and which it is the main object of this volume to enforce,—that THERE ARE FUNDAMENTAL LAWS AND INSTITUTIONS, CLEAR AND UNMISTAKEABLE, the *birthright and inheritance of every Englishman*; to which appeal has heretofore, in times of doubt or trouble, been often made, and to which appeal can at any time be made again; and the simple redeclaration of which will be a far better security for all rights and liberties, and a far surer guarantee for human progress, than any novel Commission, or experimental scheme, or nicely-trimmed closet constitution, or actual revolution,—however much either of these,—for all are of one family,—may be set off with the newest style of scenery and decorations.

When John Hampden was charged with ship-money, and nobly, in an age nearly as sycophantic as the present, resisted the imposition on the ground

* Proem to 2nd Inst.

that it was illegal by the fundamental laws of England, the case "was solemnly argued," as it is expressly recited in 16 Car. I. c. 14, "divers days; and at length it was there agreed, by the greater part of all the justices of the courts of King's Bench and Common Pleas and of the barons of the Exchequer there assembled, that the said John Hampden should be charged with the said sum so as aforesaid assessed on him."

It is the fashion to abuse these worthy judges, at this safe distance of time, for their decision, and to call them subservient to the court in so doing. This is very unjust. Their fault was that they did not have regard to those fundamental laws which are superior to all precedents and acts of parliament, and according to which an act of parliament legalizing an excise is as illegal as was the imposition of ship-money on John Hampden. They placed matters of temporary regulation or permission above fundamental laws and institutions. We are all thus apt to be blinded by that which is close to us to that which, how immeasurably superior and more majestic soever it may be, is more distant. If they were subservient, every court which has ever supported an Excise Act or a Poor Law Act or a Church Discipline Act is equally so. The question is whether, some one having at length had the courage to stand forward, as John Hampden did, *morally certain of defeat*, to show to his countrymen that there did exist fundamental laws which were being daily invaded, *what was the result*. Was the effort lost? Certainly not. Although "according to the said agreement of the said justices and barons, judgement was given by the barons of the

exchequer that the said John Hampden should be charged with the said sum so assessed on him," his appeal to the law was a glorious triumph. Many men became alive both to the fact of the existence of the fundamental laws and institutions of the land who before had overlooked them, and, further, to the fact of their infringement. The consequence was the passing of the 16 Car. I. c. 14, declaring the levying of ship-money to be unlawful. And how was this done? As if determined to show to the world that the fundamental laws and institutions of the land are, in themselves, absolutely superior to all the ordinary tribunals and their judgements, in whatever most formal way these latter may be given, whether by parliament or courts of law, the Act contains this categorical recital that the case was argued, before the judges of all the courts, and that the greater part of those judges were agreed that John Hampden was liable. It proceeds to recite that judgement was, in due course, given against John Hampden in consequence. But it does not go on either to *state* or to *argue*, that all or any of this was inexpedient, and that it should be altered or not done again. It very quietly, first, shows that all the highest *technical* legal authority of the land took one view; and then, with that dignity which the assertion of the supremacy of the fundamental law alone could give, simply *affirms*;—"all which writs and proceedings as aforesaid were utterly AGAINST THE LAW OF THE LAND." It were difficult to cite any thing finer in human history.

And this declaration of the absolute supremacy of the fundamental law is followed up in the next section in the same spirit. It is thereby "declared and

enacted that the said agreement or opinion of the greater part of the said justices and barons" [the *authority* arrayed against the fundamental law seems to be purposely and prominently repeated instead of being shirked] "and the said judgement given against the said John Hampden, were and are *contrary to and against the laws and statutes of this realm, the right of property, the liberty of the subject, former resolutions in parliament, and the petition of right made in the third year of the reign of his majesty that now is:*" every one of which points applies with equal truth to the appointment and acts of every Crown-appointed Commission, whether of inquiry or administrative, and whether under the name of Excise, Poor Law, Public Health, or any of the other thousand names under which the spirit of arbitrary and presumptuous despotism is striven to be masked.

But we may take an earlier instance than this; an instance which, though far less obnoxious and illegal than are a vast number of act-of-parliament Commissions of the present day, excited the warmest expressions of indignation from Lord Coke, and led him, indeed, twice over to refer to it in different works, each time with equally strong expressions of its illegality. His words shall be quoted.

"Against this ancient and fundamental law [his text is '*per legem terræ*'] and in the face thereof, I find an act of parliament made that as well Justices of Assize as Justices of Peace (*without* any finding or presentment by the verdict of twelve men [just as is the case in all modern Commissions and Boards]) upon a bare information for the king before them made, should have full power and authority *by their discre-*

*tion** to hear and determine all offences and contempts committed or done by any person or persons against the form, ordinance, and effect of any statute made and not repealed, &c." [just as the Commissioners of Excise, for instance, now have]. But this act of parliament, which was the 11 Hen. VII. c. 3, had provisions for the protection and security of the public which the modern acts of parliament which profess to legalise "Commissions" and "General Boards" have not. It expressly provides "that the person which shall give the said information for the king shall, by the discretion of the said justices, content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and damages in that behalf sustained, if that it be tried or found against him that so giveth or maketh any information." Modern acts of parliament encourage all kinds of malicious and secret, and even anonymous, "information;" but, whatever outrage or injury may be suffered in consequence, no redress whatever is allowed to the unhappy victim.

And it was against the statute which had this provision for the protection of the public which is wanting in modern acts of parliament of the same arbitrary spirit, and which gave powers not by any means so large in themselves as many modern acts of parliament have given, that the indignation of old Coke was kindled up to a noble height. "By colour of which

* "The General Board of Health may, IF AND WHEN THEY SHALL THINK FIT," &c. Public Health Act *passim*. The above-cited act (11 Hen. VII. c. 3.) and the Star Chamber Court Erection Act were the models on which, "with numerous *additions*," the Public Health Act was framed.

act," he goes on, "*shaking this fundamental law*, it is not credible what horrible oppressions and exactions, to the undoing of infinite numbers of people, were committed by Sir *Richard Empson* knight and *Edm. Dudley*, being justices of peace, throughout England; and upon this unjust and injurious act (as commonly in like cases it falleth out" [surely he must have had a prophetic vision of some "Commission of Inquiry" and of its following "General Board"])" "*a new office was erected*, and they were made masters of the king's forfeitures"; [read "Ecclesiastical Commissioners," "Metropolitan Commissioners of Sewers," or "Board of Health," &c. &c.].

Coke goes on to tell us the end of all this. "But at the parliament holden in the first year of Hen. VIII., this act of 11 Hen. VII. is recited, *and made void* and repealed, and the reason thereof is yielded, for that, by force of the said acts it was manifestly known, that many sinister, and crafty, and feigned and forged informations had been pursued against divers of the king's subjects to their great damage and wrongful vexation. *And the ill-success hereof, and the fearful end of those two oppressors, should deter others from committing the like, and should admonish parliaments that, instead of this ordinary and precious trial per legem terræ, they bring not in ABSOLUTE AND PARTIAL TRIALS BY DISCRETION.*"

Every word of the passages thus quoted fits so exactly to the state of things which is now the rule instead of the exception; to the whole modern system of Commissions, illegal in their inception, and mischievous in their consequences as they are; that it will, perhaps, hardly be believed that language so ex-

actly appropriate should be found in a work more than two hundred years old, and there applied, with indignation, to what took place one hundred and fifty years then before. The reader may be assured, however, that the entire passage occurs, *verbatim*, on p. 51 of Lord Coke's Second Institute.

Nor in that place alone is Lord Coke's indignation, kindled against the violators of the fundamental laws and institutions of the land, poured forth. In his Fourth Institute, speaking of the very same statute (fortunately examples were few in those days; he would have had a wider range of illustration now), he speaks of it as a statute "*which had a fair flattering preamble, pretending to avoid divers mischiefs,*" just as Audit Commission Acts, and Public Health Acts and all modern centralizing acts have. But he tells us, as posterity will be told of all Commissions and General Boards of the present time, that "the purview of the act tended, in the execution, contrary, *ex diametro*, viz. to the high displeasure of Almighty God, the great let, nay *the utter subversion of the common law*, and the great let [danger] of the wealth [prosperity] of this land." Nor does he let this fresh occasion pass without holding it up as "a good *caveat* to parliaments *to leave all causes to be measured by the golden and straight metwand of the law, and not by the incertain and crooked cord of discretion*" [as is done in all Commissions and General Boards]. And, after emphatically declaring that "it is not almost credible to foresee, when any maxim or fundamental law of this realm is altered, what dangerous inconveniences do follow," he concludes;—"this statute of 11 Hen. VII. we have recited, and showed the just inconveniences

thereof, *to the end that the like should never hereafter be attempted in any court of parliament**.” It is to be feared that a “readable edition” of Coke does not exist in the library of either the House of Commons or the House of Lords.

It will be idle for any one to attempt to distinguish the deeds of Empson and Dudley from those of modern Commissions. The spirit and necessary tendency of the powers given in that ancient and in the modern acts of parliament cannot be distinguished, except for the more absolutely despotic powers conferred by the latter. The habits of society lead to different modes of oppression and of vexation in these days from what were had recourse to in those days, and that is all the difference. But any one who has made himself familiar with what is perpetrated under cover of the Excise Laws, or Stamp Laws, or Poor Law, or others, will too well know the iniquities and cruel “oppressions and exactions” that are being daily suffered now. And no man can read the Public Health Act, and other like acts, without seeing that even wider-spread instruments of oppression, and vexation, and exaction, and violation of the rights and liberties of the people, are being daily placed within the power of those who will condescend to the “wretched competition for the selfish prizes and the petty vanities of office,”—masked from the public eye however the grant of those powers may at present be by “fair flattering preambles.”

It is unnecessary to cite other illustrations. The statutes abolishing the Commissions called the Court of Star Chamber and the Court of High Commission

* 4 Inst. 41.

have been already noticed ; together with the solemn declarations contained in each against that which is done in so many modern acts of parliament, namely, creating a Commission or a General Board, or enlarging its powers. So also has been the Petition of Right, which declares the Commissions specially named in it, and all others of like nature, to be “ wholly and directly contrary to the said laws and statutes of this realm ;” and the Bill of Rights, which declares them all to be “ illegal and pernicious.” For the full force and meaning of these declarations and prohibitions the reader must be again referred to the third chapter of the former Book.

The result is, that, though an act of parliament may be contrived to be got upon the statute-book, authorizing any Commission or General Board, yet, if the thing so authorized is contrary, as all Crown-appointed Commissions and Boards must be, to the fundamental laws and institutions of the land, the thing thus authorized does not cease to be illegal because it has this literal authority. It is still a violation of the law of the land ; and it is the duty of every one who really respects the law, and who wishes to see order and the well-being of society maintained and human progress hoped for, to use every effort to vindicate the supremacy of those fundamental laws and institutions which are thus outraged. And, unless the temper of the nation be entirely changed, unless by the vicious system of Commissions a full measure of success have already crowned the ceaseless attempts to reduce the minds of all to a mere state of “ half-development,” the vindication of that supremacy can be a mere question of *time*. Those fundamental laws and institutions

involve matters of *principle*. Those *principles involve the very elements of the national union*. Those *principles* cannot be neutralized or altered, or human nature changed, or the elements of the national union broken up, merely by the passing of an act of parliament. If they can, the pretence of living under a state of law, of being, as our fathers proudly boasted that they were, *law-worth men*,—men who felt their properties and persons secure under the guarantee of laws and customs “*which had continued through all changes**,” and which laws and customs were the “*Badges of their Freedom*,”—is an empty mockery, an unreal delusion. Those principles ought, at all times, to be “*the rule and guide to make acts by†*.” That they have continually, century after century, under every change of circumstance, been asserted and enforced *as principles*, is sufficient evidence that no mere acts of parliament can wipe them out, or lessen their importance, or take away the duty imposed on every lover of peace and good order, and every well-wisher of his fellow-men and of his country, to resist every violation or encroachment on them; to insist upon their perpetual acknowledgement; and to require respect to be shown to them by all who happen to be entrusted with authority, either within the walls of parliament or in the name of the executive.

It has been already stated that every illegal and pernicious character which has been seen to mark Commissions of Inquiry marks administrative Commissions also. That “wretched competition for the selfish prizes and the petty vanities of office,” which leads men to rush eager to the scramble for that which

* See before, p. 38.

† See before, p. 43.

ought to be felt as an indignity by any man of honourable mind and true *law-worth* spirit, is daily more and more encouraged. More and more daily are premiums held out to sycophancy and subserviency, in the vast amount of direct, and no less vast amount of indirect, patronage and opportunity of jobbing afforded by the increasing number of these act-of-parliament Commissions.

And to the never-wanting multitude of sycophantic scramblers after appointments are now entrusted, and are daily being more and more entirely given over, the arbitrary management and control of the properties and liberties of every Englishman, with only such restraint as fear of overstepping the limits of personal safety or interest may afford. The property and person of every man are subjected to harassment and vexation by unlimited and invariable powers given to such Commissions to proceed “by *information only, without any presentment or trial by jury*,—which are THE ANCIENT BIRTHRIGHT OF THE SUBJECT;”—but these Commissions are “*to hear and determine the same by their discretion**.”

Every one of these Commissions is made *Crown-appointed*. The nation is allowed no control over the nominations, no voice in them. Nay, those nominations are oftentimes such as the voice of the nation condemns, instead of the nation having, what the safety of its freedom and the existence of any *responsibility* require, “a control over” them; “the power of naming them; the power of removing them †.”

The result, of course, can only be one; that we

* 4 Inst. 41.

† Lord Brougham’s Political Philosophy, vol. iii. p. 38.

have a government of *cliques*. These cliques are of necessity, practically, self-appointed. No one is admitted who cannot be relied on to support, as well the grand system of Commissions in general, as the particular scheme or crotchet by which the particular clique rejoices in the opportunity of “*grinding of the face of the poor subjects* *” by the enforcement of its Procrustean theories. Not only have we thus a government of exclusive cliques, but—what is hardly credible in the face of the “known, established and fundamental laws” which have been cited—these cliques have generally had art enough to have the amount of the salaries they shall receive left wholly to themselves to determine†! Nothing was ever more anomalous or monstrous. It has already been seen that this is in open violation of the spirit and letter of the fundamental laws of the land. Yet in every fresh Commission Bill we still find all that is said about the number of appointments, and about the salaries of the appointees, to be, that they shall be such “as shall from time to time be approved by the Commissioners of Her Majesty’s Treasury,” or words

* Coke, 4 Inst. 41.

† Thus, for example, by the so-called Public Health Act, secs. 5, 6 and 7, the Board may appoint *a secretary, and such clerks and servants and superintending inspectors as they like*, subject to the approval of—*Parliament*?—oh! no—the *Lords of the Treasury*! And all these officers, as well as the Commissioners themselves, are to have *such salaries* as the Lords of the Treasury may please! That is, *unlimited powers of corruption and jobbing at the nation’s expense* are given. The nation or parliament has no voice in the matter, and the danger of the interference of either has, it will be seen by the next note, been specially provided against. How long will such a monstrous and illegal system be endured?

to that effect*. That is to say, the executive usurps into its own hands the entire patronage afforded by every new Commission, taking care to have the amount of that patronage made to be *unlimited*, except at its will ; and usurps the power, also, of saying how much shall be paid to each of the sharers of that patronage and supporters of its system of jobbing and corruption. It has been said of Louis Philippe that “ the entire aim of his government was practically to put the power and direction of the state at the unlimited disposal of

* The careful and deliberate way in which the fundamental laws of the land are violated by the authors of Commissions will appear from the following note from Mr. Lawes’s edition (intended to be “ *by authority* ”) of the Public Health Act, to the section of that act in which salaries are, very carefully, thus vaguely handled. “ By a standing order of the House of Commons, dated March 29, 1707, all bills for granting money must be considered, in the first instance, in a committee of the whole house ; BUT *when provision is made according to the form of this clause, the bill containing it is NOT within the meaning of the order.* ” That is, the nation is, by the use of these words, fraudulently deprived of the protection which that standing order was expressly provided to secure. He goes on ;—“ In fact, no money is granted by the present clause, but it *amounts to a pledge* that parliament will make the necessary grants from time to time.” It is hardly credible that this should thus be openly avowed. It is as much as to say that this clause has been inserted for the express purpose of enabling ministers to snap their fingers in the face of parliament and people ; to deprive the latter of all the protections for property, and against illegal taxation, which have been so carefully provided by all our fundamental laws and institutions ; and to supersede altogether, as it has been seen that in so many other ways is being done, the primary and radical functions of parliament. Before “ Financial Reformers ” can ever hope to do any real and permanent good they must look to these things. *There is no subject more than an equitable adjustment and reduction of the burthen of taxation to which it is so all-important that a stand be taken, and not shrunk from, on the fundamental laws and institutions of the land.*

the executive*.” It is unquestionable that such is the ceaseless object of the Whig government of this country, and of any other government which can uphold the system of *government by Commissions*.

It is no wonder that we are told, in answer to Mr. Cobden’s “budget,” that, since 1835, we have been “employing more hands, and paying more wages.” No doubt we have ; and, while the system of Commissions is allowed to flourish, we shall every year have more hands coming up eager for the “wretched competition after the selfish prizes and the petty vanities of office,” more places made for them to fill, and more wages drawn from the pockets of the people to pay them. There never have been, and there never will be, expedients wanting for making places, and for paying the hungry seekers after them. The system is daily extending ; and will daily extend till the public voice, or the absolute impossibility of raising the millions of taxation annually wasted in reckless extravagance and jobbing through this system, compels the entire and uncompromising abandonment of the whole.

The only way in which that *responsibility* can exist, which it has been shown to have been the special object of our fundamental laws and institutions to secure, is by *one single person* being alone entrusted with authority in respect of each single object of executive attention. Formerly this was the case in England, and the government was then economical and really responsible ; neither of which characteristics will or can be restored until that characteristic is also restored. Every thing is now done by Commission. We have Commissioners for executing the office of

* Examiner, Jan. 13, 1849.

Lord High Admiral, Commissioners for executing the office of Lord Treasurer, &c. &c. There are two advantages attending this system. The first is that it affords more places, and thus plants a greater number of placemen in the breeches-pockets of the people. The second is that it destroys responsibility. True responsibility can never exist where there is a *divided* responsibility. Every-day life proves this. A number, be it ever so small, will do a great many things which one man would never dare to do. There is no branch of true executive functions to which, if the fundamental laws and institutions of the land were respected and obeyed, and things which those laws forbid to be intermeddled with let alone, it would not be quite within the capacity of any one man of ordinary abilities to give all due attention. The several functions would then be really attended to. Nothing is more important to be insisted upon than the *singleness of all offices*, and the *undivided responsibility* of each who fills them.

These remarks apply to many matters which are, beyond a doubt, within the proper range of those things which must always be entrusted to some individual, responsible to the nation, to fulfil, in order that the community may the more freely and fully develop all individual energies. But the Commissions under more immediate consideration are, all of them, either mere useless jobs, or have relation to matters with which the interference of Government is only, and can only be, mischievous. None of these Commissions could, in any form, ever have had existence had the public interest and the development of the energies of the community been the objects sought.

Admitting, however, for the sake of argument, that Commissions such as last alluded to ought to exist in connection with government, it is perfectly clear that they ought only so to exist as being directly *responsible* to the nation for all their acts. But there is not one of them which has a shadow of responsibility. Besides being Crown-appointed, they are permanent ; dependent only on being able to keep in favour with government, and not in the least degree on the discharge of their duties to the public satisfaction. Government, anxious to throw off even that semblance of responsibility which still attaches to its chiefs (a semblance only), hands over every thing to these Commissions, nominated by themselves and totally irresponsible, directly or indirectly, to the people. But is any complaint made within the walls of parliament ? Instantly up jumps the individual under whose thumb the particular Commission happens to be, and protests that he who is complained of is an “ honourable man :—so are they all, all honourable men.” And appeals are made to the feelings of honourable members as gentlemen, and to the well-known character of the individual who may be implicated ; and many chivalrous common-places are uttered ; while the main point is left untouched, *and the public is juggled out of that control which, by the fundamental laws of the land, it has a right, AND IT IS ITS DUTY, to have over every man holding any office in the public service, or receiving one penny of the public money.* It is impossible to deny that this is the actual state of things at the present day. Every session offers illustrations. It is the system of Commissions which stands between the nation and the exercise of that control which is theirs

by birthright and inheritance, and until which is insisted on, in reality and not in name, neither can taxation be ever placed on a safe and permanent footing of equitable adjustment or reduction, nor can those drags which now hang round the development of individual or national resources be shaken off.

Before giving special illustrations of any of the administrative Commissions, it is proper to remark that, besides all the attempts which have been already noticed, as made by the authors and supporters of the Commission system, for superseding the functions of parliament, there are contained in several of the acts of parliament creating these Commissions, clauses which directly supersede the functions of parliament in matters of very great importance ; while the Privy Council has of late years usurped to itself, on many matters, the functions of parliament, besides having had others professed to be given to it by divers acts of parliament. It is unnecessary again to show, as has been done fully in the second and third chapters of the former Book, that all this is a direct and most dangerous violation of the fundamental laws and institutions of the land, and of the most express letter as well as spirit of fundamental laws declared at times when especial attention was called to a similar abuse. There now exist in this country many courts—the blessed results of Whig legislation—as illegal and arbitrary and dangerous as the Court of Star Chamber and the Court of High Commission. Parliament itself will soon be reduced to be little more than the registrar of the decrees of an absolute government, as it already is on very many matters. Many of its most essential functions are now openly attempted to be

discharged, and to be procured to be discharged, not by the common council of the whole nation, *elected* by the nation, but by a few, belonging to a special clique, and *selected* by the ministers of the crown. It is the duty of the nation to see that parliament asserts, and insists upon, the exercise of all its functions; and that privy councillors, as well as others, be taught to remember the due limits and duties of the honourable office which they hold, and be not suffered to exercise, or to attempt to exercise, any of that "jurisdiction, power, or authority" which it has been again and again declared by the fundamental laws of the land that they "*neither have nor ought to have* *." And it were well that parliament should remember, if it would preserve its own dignity and command the respect and confidence of the nation, that for "*the high power of a parliament to be committed to a few is holden to be against the dignity of a parliament; and that no such Commission ought to be granted* †."

As in the case of Commissions of Inquiry, it will be impossible to notice all or nearly all the administrative Commissions which actually exist. They are disguised under very various names, and have gradually insinuated themselves into every branch of the public service. But the great stride which they have taken has been within the last few years.

All are based on the lowest, most grovelling and materialistic view of human nature, instead of on any elevated views of it, or on any sympathies with, or apparent knowledge of, its higher and nobler aspirations. All despise and set at naught any dealing with *ideas*, the only true basis on which legislation, to be

* 16 Car. I. c. 10.

† 4 Inst. 42.

sound, can ever rest. All assume that codes and regulations can be put in operation by brute force, and that men can be kept in a certain beaten track and routine in the same way as a herd of animals. The following language, from the late pages of a well-known periodical, is fully applicable to them all, without exception, and should be well thought on. It is from the pen of a distinguished writer who is understood himself to have once held different sentiments, and whose prejudices still evidently linger with him, but upon whom it would appear that recent events on the continent of Europe, in the favoured lands of centralization, have not been wholly lost. "The greatest objection," says this writer*, "to the extension of government interference, is its tendency to keep the people in leading-strings, and to deprive them of the power to manage their own common affairs, by depriving them of the practice without which the arts of administration cannot be acquired. When we have been examining the high organization of many parts of the continent, where an enlightened [?] central authority educates the people" [that is, puts the faculties of all into one beaten track of 'half-development,' the necessary result of all state education], "provides their roads and public buildings, directs their industry, keeps them to their hereditary trades, and to their hereditary abodes, and their hereditary sects; thinks for them, in short, in all public and in almost all private matters, we are sometimes disagreeably struck by the contrast of the rude local administration of England, with its narrow-minded prejudices, its jobbing, and its negligence;" [that is, as

* Edinburgh Review, No. clxxviii. p. 334.

mis-represented in divers "Reports," the special object of which has been the manufacture of evidence and the getting up of cases exhibiting that aspect]. "But to this centralisation is to be ascribed the childishness and sluggishness of most continental populations in quiet times; and the madness which seems to seize them if the central power once drops the reins. From unreflecting obedience and torpor, they pass, at once, to equally unreflecting rebellion, civil war and foreign war."*

The mischiefs necessarily consequent upon the Commissions called the Court of the Star Chamber and the High Commission Court, and how those Commissions were found to be, like all others, "an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government†," together with the emphatic prohibitions against their re-erection, and the open violation of those prohibitions in our day, have been already touched upon. It is unnecessary to allude further either to them or to those Commissions, less pernicious than many actually existing ones, which were specially denounced in the Petition of Right and in the Bill of Rights. The first Commission to which special allusion shall be here made is that of the Excise.

It would occupy too much space to enter into full details either of the history of the Excise or of its mode of practical working. It is sufficient that it began in fraud, and has ever since been, and always must be while it exists, the nursing-mother of fraud and every form of immorality and iniquity.

* See the quotation from J. Grimm, Book I. Chap. III. p. 162.

† 16 Car. I. c. 10.

The first attempt at imposing an excise, in the reign of Charles the First, though but as a drop in the bucket as compared with the present system, roused just indignation and was compelled to be abandoned. An eye-witness of what then took place thus records the feelings of that day, and gives us the opinions of the most eminent lawyer that England ever produced as to the illegality and perniciousness of an excise. "The House of Commons, having notice given them of this Commission, sent for it, and upon debate thereof, *without any one dissenting voice*, voted and adjudged it to be AGAINST LAW, and CONTRARY TO THE PETITION OF RIGHT, though only sealed and never put into execution; and then, desiring a conference about it with the Lords in the painted chamber (whereat I myself was present), Sir Edward Coke, by the Commons' appointment, after the Commission read by Mr. Glanvil, manifesting the *illegality, strangeness, and dangerous consequences of it to the whole kingdom* in an elegant speech and argument, amongst other expressions styled it, *Monstrum horrendum, informe, ingens*,—descanting upon every one of the words,—yet, blessed be God, *cui lumen ademptum*, whose eyes were pulled out by the Commons in parliament (which they hoped their Lordships would second), before ever it saw the sun, or was fully brought forth into the world, to consume and devour the nation. The Lords hereupon fully and unanimously concurred with the Commons, *adjudging it to be AGAINST LAW AND THE PETITION OF RIGHT, and FIT TO BE ETERNALLY DAMNED**."

* A Declaration and Protestation against the illegal, detestable, oft-condemned, New Tax and Extortion of Excise in general, by William Prynne, 1654, p. 9.

And the last parliament of Charles, thirteen years later, “revived, approved, ratified and insisted on this primitive sentence of condemnation against excise, as most illegal and detestable.”

In 1642 a report got abroad that the House of Commons intended to impose excises; whereupon the house thought it necessary, “for their vindication therein, to declare that those rumours are false and scandalous. And for as much as these false rumours and scandals are raised by ill-affected persons, and tend much to the disservice of the parliament, it is therefore ordered that the authors of these false and scandalous rumours shall be searched and inquired after, and apprehended and brought to this house to receive their condign punishment;” which order was ordered to be printed and published (8th Oct. 1642):—so strongly was it felt that the whole system of excise was illegal and pernicious. And the king’s party were equally anxious to disown all intention of laying excises, it being expressly stated in the letter to the Earl of Essex from Oxford, dated 27th Jan. 1643, that, among other things, “To lay excises upon all commodities” is a “manifest breach of the Petition of Right, and of Magna Charta, the great evidences of the liberties of England.”

By what means the system was at last imposed, and under what fraudulent pretences, in the reign of Charles the Second, shall not be here detailed. It was a first grand step to that system of centralization and despotic power which has since been going on, and which has made such wide and rapid strides of late*.

* It is impossible to enter on the whole matter of *centralization* in this volume. But I cannot pass over the subject of excises without remarking that the entire mode of collection of all government taxes

It has been seen how Lord Coke spoke of the "oppressions and exactions" which took place under the 11 Hen. VII. c. 3, in consequence of the system established by that act of making men liable "by information only, without any presentment or trial by jury." Such is the entire system by which the excise laws are put in force. Encouragement is indeed given by this system to "every latent villany of human nature." In 1706 was published "Remarks on the horrible Oppressions, Insolences, and unjustifiable Partialities of the Commissioners of Excise ;" which were illustrated with numerous cases showing the fearful effects of the system as endangering the security of the persons and properties of the people. The reason that more is not heard of such cases, which do now every day take place, is the position in society of the larger number of those against whom the system operates. Lord Camden himself felt this, when he expressly said, in reference to one such case, "It must have been the guilt or poverty of those upon whom such warrants have been executed that deterred or hindered them from contending against the exercise of such a power*." But hence has the system been gradually and from year to year making the more dangerous encroachments.

Well might every man be called upon, by a writer at the time of the great Whig attempt at extending the excise system, in 1733, to "lay his hand upon

now practised in this country is a violation of the fundamental laws and institutions of the land, a mere crafty device of centralization, and a *dead loss of seven millions per annum to the pockets of this tax-paying people.*

* 2 Wilson's Reports, 286.

his heart and consider whether there has been no flagrant sin amongst ourselves, which has drawn down this severe judgement upon us*." Although it is the fact that in a large majority of cases the poverty of the parties suffering has caused the oppressions of the system to be little heard of, or their peculiar position has led many to hush up wrongs under which they have smarted†, yet every Englishman ought to know that the myrmidons of the excise "may, in the middle of the night," *as the law at this moment stands in England*, "enter the bedroom of any lady in the land; and, if the information shall appear to be false, the person thus molested *has no remedy*,—the little perjured informer is liable to no penalty‡." It were well that all should remember what was long ago justly said by Lord Coke,—that, "though commonly the houses or cottages of poor and base people be, by such warrants, searched, yet if it be lawful [as it is pretended to be made by the excise laws], the house of any subject, be he never so great, may be searched by such warrant upon bare surmises§."

The Hearth Tax was abolished on the express

* "A very long, curious and extraordinary sermon preached on Wednesday, March 14, 1732–3, at a noted chapel in Westminster from these words of St. Luke, c. ii. v. 1. *And it came to pass in those days that a decree went out that all the world should be taxed*: with some practical observations and uses suited to the present times." 1733, p. 7.

† I allude especially to men engaged in the various trades which are subjected to the excise laws; and who know that their whole fortunes and lives depend on their submitting in silence to all the iniquities and oppressions daily practised under this most degrading, un-English and demoralizing system.

‡ The late Excise Scheme dissected, 1734, p. 60.

§ 4 Inst. 176.

ground, as declared in the preamble to the statute repealing it, that it was “a *badge of slavery* upon the whole people, exposing every man’s house to be entered into and searched at pleasure by persons unknown to him*.” But by the excise system at this time enforced in this country, and whose arbitrary powers have been infinitely extended since any of the expressions of indignation already quoted were made use of†, that badge of slavery is fastened upon the whole people; and it is truly, as was expressed by a committee on tobacco excise in 1790, when the system was less arbitrary than now, “a system not more painfully insulting to the feelings of every man of spirit, sense or integrity, than *fundamentally subversive of every right, privilege, and security which free men claim from a free constitution.*”

The opinions of Lord Coke on the illegality and mischiefs of the excise system have been already seen. And he is not the only lawyer who has expressed similar opinions. Lord Camden’s expressions have been also cited. He elsewhere declares that the system which is being now daily practised under this Commission “is worse than the Spanish Inquisition: it is a most daring attack made upon the liberty of the subject; and the 29th chapter of Magna Charta, which is pointed against arbitrary power, has been violated.” And other equally strong expressions of the same great judge might be cited. Blackstone himself

* 1 W. & M. c. 10.

† I have treated this subject and its open illegality at length in my “Considerations respecting the system of Anonymous Espionage and Search Warrants practised by the Commissioners of Excise as affecting the civil liberties of Englishmen,” 1846.

declared, when the excise system was at a far less dangerous height than it now is, that “the power of these officers of the crown over the *property* of the people is increased to a *very formidable* height*.” It is now equally formidable to their persons and liberties. He elsewhere expressly says that “the rigour and arbitrary proceedings of excise laws seem hardly compatible with the temper of a free nation;” and this was while the powers given by them were far less extensive and arbitrary than they now are. He adds, “From its first original to the present time, its very name has been odious to the people of England†.”

One of the best short characteristics of the whole system ever put in words was the definition given of the word “Excise” in Dr. Johnson’s dictionary. It is there defined as “*A hateful tax levied upon commodities, and adjudged, not by the common judges of property, but wretches hired by those to whom excise is paid.*” This definition is true to the letter; and is not more severe than Lord Coke’s frequent denunciation of those who would violate the fundamental laws of the realm by not “leaving all causes to be measured by the golden and straight metwand of the law, but by the incertain and crooked cord of discretion‡.”

The very plain English of the words “wretches hired by those to whom excise is paid” expresses, in terms rather stronger than the politeness of the present day is accustomed to, the precise position of all Crown-appointed Commissions, all who are nominated by the executive and who fulfil in their own persons,—as Commissions of Excise and almost all other administrative Commissions do,—the several characters of

* Vol. iv. p. 281.

† Vol. i. p. 318.

‡ 4 Inst. 41.

accuser, judge, jury, and executioner. It may, indeed, be remarked that all the observations which have been quoted as to the excise system will apply to any other Commission besides that of excise, though with peculiar force to some special ones, such as the Poor Law Board and the Public Health Board.

But it is important, while the indignation of every honest man must burn against a system like this on account of its open and flagrant violation of every law and institution by which the security of person and property, as set forth in the third chapter of the former Book, is secured, that its chilling and cramping effects upon science and manufactures be not forgotten. In chilling and depressing these, it, of course, affects again, though more indirectly, the properties of the whole nation, and, directly, the progress of the nation and the elevation of the national character. All centralization and procrustean systems must always have effects similar in kind, and differing only in degree. The following extracts from Dr. Ure's "Supplement to his Dictionary of Arts and Manufactures" (1845, p. xv. &c.), while they briefly point attention to the direct effects of the excise system in particular, represent in too sad reality a true picture of the necessary and universal effects of the centralizing system of Commissions, whether it take the shape of Excises, Public Health Acts, or any other of the numerous forms by which the ingenuity of whig statesmen has contrived to extend their amount of patronage and the means of planting their creatures in the breeches-pockets of the people.

Speaking of one particular manufacture, Dr. Ure says, "We here see, on a somewhat magnified scale,

the system of interference with, and prying into, processes of art and manufacture which accompanies and characterizes all the operations of the excise. We may say of it, *Quicquid tangit, deornat*. No branch of industry can acquire its due development under its wiry training and fastening. Had the incubus of the excise overlaid our textile manufactures of wool, cotton, flax, and silk, how dwarfish would their stature have remained, and how meanly would they have quailed under the unrestrained labour of rival nations ! whereas now they afford employment, with food, raiment, and lodging to millions of our people. For the manufacture of glass in all its useful and ornamental branches, this country possesses indigenous resources superior to those of every other, in its stores of fuel and vitrifiable materials of every kind ; and yet it is surpassed by France, Switzerland and Bavaria in glass for optical purposes, and by Bohemia in the quality and execution of decorative glass. Our scientific chemists have been obliged to get all their best glass apparatus from Germany *viâ* Hamburgh.” This does not nearly express to the full extent the mischief. Astronomical improvements of the highest importance, and improvements in all optical instruments, have been *absolutely proscribed and prevented* in England through this monstrous centralizing and procrustean system ; just as, under a Public Health Board, every improvement in matters of the nearest interest and importance to health and comfort will be proscribed and prevented. Dr. Ure goes on :—“ The incessant and vexatious espionage of the excise is a bar to all invention in every art under its control. Who would expend thought, science, labour and money in matu-

ring any discovery or improvement by experiments necessarily conducted under the eyes of needy excise-men who would tell all they have seen for a trifling bribe? As a general corollary from my long experience in the conduct of arts and manufactures, I feel warranted to declare that the excise system *is totally incompatible with their healthy growth, and is, in itself, the fruitful parent of fraud, perjury, theft, and occasionally murder.* The sooner this portion of the revenue, so oppressively, so expensively, and so offensively collected, is replaced by an equitable tax on property, the better for the welfare of this great country. I have no quarrel with the gentlemen who administer the excise laws. Several of them, with whom I have been professionally conversant, I esteem very highly as intelligent and upright men, who do what they deem their duty in a conscientious manner. But, in concluding a very extensive survey of the great branches of our national industry, this vile obstacle to their progressive growth became so manifest that it would have been pusillanimous to shrink from the task of pointing out the magnitude of the evil."

The next administrative Commission to which attention shall be directed is the "Commission of Woods, Forests, and Land Revenues." Nothing can better show the inherent viciousness of the whole system of government by Commissions than the putting the Commission of Woods and Forests side by side with that of Excise. The former has relation, in the direct and original objects committed to its charge (for, as in all Commissions, usurpation is its continual rule), to a totally different class of matters and duties from the latter. Yet each proves, in its working,

equally pernicious, equally obstructive of every thing like individual and national progress.

Like the office of Lord Treasurer and Lord High Admiral, the offices committed to this Commission were formerly discharged by single officers, the Surveyor-general of Woods, the Surveyor-general of Land Revenue, &c. The present Chief Commissioner has the candour to admit that the affairs of this—and by parity of reasoning of every other—department would be better managed by one paramount head* instead of the responsibility being divided, and so neutralized altogether, by the Commission system; an obvious truth which has been already insisted on.

And in noticing this Commission it is a grateful task to stop to make one remark. There has been no exposure of late years more disgraceful or complete than that of the mismanagement, the gross waste, and reckless defrauding of the public property, as committed under the immediate charge of the Commission of Woods and Forests. Had any one ventured to assert one tithe of what is now printed in a parliamentary document it would have been set down to virulent party spirit or rabid personal feeling. But at the same time that we see all this fraudulent, reckless, utterly inexcusable waste of the public property, we see at the head of the department which is guilty of it a man of personally unimpeachable character, and assuredly of sincere desire to do what in him lies to better the physical condition of his fellow-creatures. A man more earnest in this wish than the present Earl of Carlisle probably does not live. It is peculiarly grateful, while his measures have been, and

* Query 189, Select Committee on Woods and Forests, 1848.

probably will have to be, uncompromisingly opposed with tireless effort, to record this personal feeling towards the man. Throughout all parts of the subject dealt with in this volume it is the *SYSTEM*, and *not the individuals who are agents in it*, against which every observation, argument, and illustration is directed. The Earl of Carlisle is necessarily, from his position, liable to be imposed on; that he has been most grievously imposed on in many instances there cannot be a question. But notwithstanding that one schemer may, at one time, have succeeded in persuading him that nitrate of lead, and another schemer, at another time, that egg-shaped sewers, were the one thing needful for the salvation of mankind, his own earnest desire to do that which, so far as he saw, was for the good of his fellow-creatures, remains undoubted. He has been, and is, the victim, like many others, of a system; and the victim of a clique of which it was his ill-fortune, as it is that of others, to be born a member.

The exposures which took place in the Committee of the House of Commons in 1848, as to the management of the Commissioners of Woods and Forests, are not to be looked at as an isolated case. If they are so looked at, the greater part of the value and importance of the exposures themselves will be lost. They constitute but one *illustration* of what is going on in all the departments of government and in all Commissions. The exposure which took place in the same session of the mode of doing business in the Colonial office, and of the kind of morality openly avowed by its chief, has served, no less than the Woods and Forests Committee, to open the eyes of

every honest and right-minded man to the way in which all the business of the country is being carried on, and in which her welfare is being sacrificed to individual interests or crotchets. Meantime the Commissioners of Woods and Forests have, *for the present*, been made, to some extent, the scape-goat.

This Commission, like all others, originated with "a fair flattering preamble, pretending to avoid divers mischiefs*." The pretence was, "that the land revenues of the Crown may be *increased, and consequently the burden upon the estates of the subjects of this realm may be eased and lessened in all future provisions to be made for the expenses of the civil government.*"

History has been said to be philosophy teaching by example. An historical illustration of pretences exactly similar to those on which this Commission was founded, and which resulted in a manner precisely as much in accordance with those pretences, will, then, be instructive as well as interesting.

"It fell out in the reign of Henry VIII. that, on the king's behalf, the members of both houses were informed in parliament that no king nor kingdom was safe but where the king had three abilities. *First*, to live of his own, and able to defend his kingdom upon any sudden invasion or insurrection; *second*, to aid his confederates; otherwise they would never assist him; *third*, to reward his well-deserving servants. Now the project was, that, if the parliament would give unto him all the abbeyes, priories, friaries, nunneries and other monasteries, that for ever in time then to come he would take order that the same should not be converted to private use; but, *first*, that his Exche-

* Coke, 4 Inst. 39.

quer for the purposes aforesaid should be enriched ; *secondly*, the kingdom strengthened by a continual maintenance of forty thousand well-trained soldiers with skilful captains and commanders ; *thirdly*, for the benefit and ease of the subject, who never afterwards (as was projected) in any time to come should be charged with subsidies, fifteenths, loans, or other common aids ; *fourthly*, lest the honour of the realm should receive any diminution of honour by the dissolution of the said monasteries, there being twenty-nine lords of parliament of the abbots and priors (that held of the king *per baroniam*), that the king would create a number of nobles." The promises here held out were of precisely the same character as those held out at the formation of the Commission of Woods and Forests. The nation was to be eased of its burthens in each case, and by the same means,—the increase of the land revenue. The parallel holds equally good in the result. Mark how old Coke kindles into indignation as he tells us how the nation was quietly cheated in the former case.

"The said monasteries were given to the king," he goes on, "by authority of divers acts of parliament. . . . Now observe the catastrophe. In the same parliament of 32 Hen. VIII., when the great and opulent priory of St. John's of Jerusalem was given to the king, he demanded and had a subsidy both of the Clergy and Laity. And the like he had in the 34 Hen. VIII. ; and in 37 Hen. VIII. he had another subsidy. And since the dissolution of the said monasteries he exacted divers loans, and, AGAINST LAW, received the same*."

* Coke, 4 Inst. 44.

The Commissioners of Woods and Forests have followed this example to the letter. For once they seem to have looked into a page of history. Not only do we find that, instead of any "lessening of the burdens upon the estates of the subject," this Commission has contrived to waste and squander the property entrusted to its care to an extent almost incredible, but it has also contrived, not once or twice only, but on several occasions, to "exact divers loans, and, against law, to receive the same;" connected with which last matters, moreover, there are some little family transactions which throw a peculiar domestic interest around the Commission. Of this by and by. It must first be shown how much "the burden upon the estates of the subjects of this realm" has been "eased" by the "increase of land revenue" which this Commission has achieved.

Whittlewood Forest contains 4010 acres and lies in a ring fence. Through twenty-five years, up to and inclusive of 1846, the total of income derived from this forest has been £20,961 or £838 a-year; equal to four shillings and two pence per acre. As the value of land is everywhere increasing, so the profits of this valuable tract appear to be becoming every year "small by degrees and beautifully less." In 1846 the total revenue from this 4010 acres was *one pound four shillings: that is, a fraction more than one quarter of a farthing per acre*. A very profitable and well-managed estate no doubt the reader will admit. All this it must be remembered is given in evidence by one of the Commissioners of Woods and Forests himself: so there can be no mistake.

Now take another view of the subject. A very ex-

perienced land-agent of thirty years standing is asked his opinion. He says that nothing can be worse than the management of this same Whittlewood Forest. *The soil is remarkably well-adapted for agricultural purposes*, —of this land, be it remembered, which, under the protecting care of this Crown-appointed Commission, is producing the enormous rental of a quarter of a farthing an acre to “ease the burthens on the estates of the subjects of this realm.” The same gentleman tells us that he should be very glad to give £5000 a-year for it, and to be himself at the cost of enclosing and cultivating it. But the timber alone on the forest is also worth from £350,000 to £370,000. If £5 per acre were spent over the land, which would be but a trifle deducted from the value of the timber, this property alone would be worth £5500 a-year clear of all expenses. This gentleman states, however, that the underwood and small timber would alone nearly meet this expense of £5 an acre ; so that a clear rental of £5500 a-year might be obtained, *besides* the interest of £350,000, the value of the timber. Thus this forest, which, under the fostering care of this Commission, produces a quarter of a farthing an acre, and a total of one pound four shillings into the exchequer, would, under any ordinary management, produce *at least* £19,000 or £20,000 per annum. Have we not need to thank Heaven that we enjoy the blessings of Commissions ?

It appears that the timber, which forms so valuable a part of this forest, is being daily deliberately ruined by the officers under this Commission. They habitually destroy the timber by lopping the branches for the deer to feed upon. What become of “the king’s

fat deer," which thus thrive upon the ruin of timber worth £350,000 in one forest, we shall presently see. "The extent of the injury" thus done "is incalculable*."

Whychwood Forest is another estate under the management of the same Commission, and which exhibits almost exactly the same details. It consists of 3741 acres. The average receipts for the last twelve years have been £103. In seven years out of the twelve there has been an actual loss. The same gentleman who speaks to the actual value of Whittlewood Forest, declares that, without reckoning the value of the timber, Whychwood Forest is worth £4625 per annum, and that, including the value of the timber, the forest is worth from £280,000 to £300,000. The present mode of management of this estate, like that of Whittlewood, is "perfectly destructive to the property†."

But these are mere trifles. To have a more just idea of the blessings which this country owes to Commissions, and of the way in which the nation is "eased of its burdens" by that means, we must go to the New Forest.

The New Forest is twenty miles long and about fifteen miles wide. It contains 66,291 acres. It is not twenty miles from Portsmouth, having water-carriage very near at hand. The total net revenue from the New Forest for forty-six years has been £115,209; that is, about 9*d.* an acre per annum: and the expenditure has been gradually increasing, so that in 1846-47 the income has been less than in any year since 1803. Now it is stated upon competent autho-

* See Minutes of Evidence, pp. 40, 45, 86, 90, &c.

† *Ibid.* pp. 52, 55, 88.

rity, unshaken after cross-examination, that *in the present state of the forest*, it is worth £24,301 per annum! and that, without reckoning the value of the timber, which is worth £32,970 a-year, being a total annual actual value of £57,271 a-year for this New Forest. And after deducting rights of common, &c. existing over the New Forest, the value of the fee is estimated at £1,583,760. Thus, while this forest might, *in its present state*, produce, and under any ordinary management would do so, £57,271 a-year, it actually produces, under Commission management, on an average of forty-four years, £2618, but really, for many years, much less. There is then a dead loss secured to the public, through the gross mismanagement of this Commission, of, at the least, more than £55,000 *a-year* in the New Forest alone*.

Some specimens of the mode in which this Commission manages matters in the New Forest with a view of “easing the burdens on estates,” will no doubt be interesting to the reader.

It appears that the Commission of Woods and Forests—which has lately set up for being the only body in the world that knows anything about draining—has been spending £12,000 or £14,000 in the very useful and interesting occupation of draining the roots of divers oak-trees and brushwood in the said forest†. It is not enough that all the world is to be told how drains and ash-pits, for human use, are to be made by this Board and its creatures, but it is very kindly undertaking the same office for the oak-trees and the brushwood, which have hitherto lived in the same state of darkness upon these subjects as human kind

* See Minutes of Evidence, pp. 93, 167, 221, 302. † Ibid. p. 139.

have done. If the "British Oak" has supplied us with wooden walls, enabling us for a thousand years to brave the battle and the breeze, under all the disadvantages of being left to grow after its own manner, what must we not expect when our ships shall be built of timber whose roots have been all carefully drained under the protecting care of the Commissioners of Woods and Forests?

There appears to be no check against any one running off with timber from the New Forest who may be so inclined. There is little doubt but that this has been often done. No accurate returns appear to have been ever made, or required to be made, of large quantities of timber. Of large quantities no returns *at all* appear to have been ever made. But the frauds committed in respect of the timber are far too great and various for it to be possible even to allude to them with any detail here*.

The Commissioners of Woods and Forests, having a good deal of leisure on their hands, took to farming; and a very satisfactory business they have made of it. *Though no rent whatever was paid or debited*, they have contrived, after farming for forty-four years on a farm with 230 acres under cultivation, to realize a loss of £4302. No surprise is expressed by the Commissioners at this loss. It is treated as a matter of course. A very satisfactory state of things no doubt to the country; and a very happy illustration of the way in which about half a hundred millions of money are being annually contrived to be squandered for the good of the nation by the company of cliques of which the Commission of Woods and Forests forms one

* See Minutes of Evidence, pp. 205, 209, 211, 220.

member. A very satisfactory illustration, too, it affords of the way in which the private interests of every man will be managed by Public Health Boards and the other new jobbing cliques which have been recently formed under the especial charge of the Chief Commissioner of Woods and Forests.

Another of the small matters which illustrate the excellent management of this Commission is Parkhurst Forest, which consists of 1100 acres, without any conflicting rights or interests. This has been so well-managed that, with one single exception, there has been a dead loss upon it *every year since it came under their management*. A total loss has been realized, since 1812, of £13,809.

A vast number of appointments are, directly and indirectly, in the hands of these Commissioners in respect of the different forests. The labours of some of these officers appear to be very onerous, and their salaries well-earned. Thus we find that, in Hainault Forest, there are *ten* keepers, each paid a salary, and *there are twenty head of deer* for these ten keepers to take charge of*!

There is one duty, however, which seems to have never been neglected, and which is still performed with commendable assiduity and zeal by all parties concerned. That duty is the very important one of supplying venison to certain persons about the court, to different other Commissions, and to a few official individuals. When a table occupying nearly two pages, in double columns, is found, containing a list of the fat bucks yearly supplied to a few individuals, as the only apparent use and result of all this waste of re-

* See Minutes of Evidence, p. 31.

sources, and of all these thousands of acres of valuable land lying worse than idle, one is indeed inclined to exclaim, with the Bishop of Hereford,—

“ Oh, what is the matter, my fine fellows,
Or for whom do you make this ado ?
And why do you kill the king's fat venison,
When your company is so few ? ”

And the only answer which can be given will assuredly be—slightly changing Robin Hood's reply to the Bishop—

“ We are Commissioners of Forests,
And we waste Woods all the year ;
And we are disposed to be merry sometimes,
And to kill of the king's fat deer.”

It appears that the Commissioners of Woods and Forests assign to themselves, under very various *aliases*, no less than 64 head of venison annually, that is, 32 fat bucks and as many fat does*. A highly satisfactory reason, no doubt, the annual distribution of these fat venisons affords for the destruction and waste of that which, without one penny's expenditure, might alone yield a large immediate revenue ; and which, allowed to be appropriated to the production of that revenue, would be further productive of benefits incalculable to the neighbouring districts, and important to the nation at large†.

Allusion has been already made to the superintendence which this Board volunteers over all works of a public nature, and which it has lately been particularly kind in insisting on bestowing on all matters relating to sanatory arrangements. The Preliminary

* See Minutes of Evidence, pp. 38 and 301. † Ibid. p. 170.

Inquiries' Act, named in the last chapter, is one instance of this. But the Chief Commissioner of Woods and Forests is chairman of endless other Boards and Commissions far more numerous than can be named. He is one of the Commissioners of Westminster Bridge,—the only bridge in the metropolis in which government has had a hand,—and the only one which has proved a bungling failure. The management of the royal palaces and parks is lodged in the hands of these Commissioners; and how they discharge that office, and how they are likely to discharge the offices which, with the usual centralizing assumption of infallibility, have been lately vested in the Chief Commissioner, as Chairman of the Public Health Board and of the Metropolitan Sewers' Commission, may be in some degree judged of from a few facts, to which the reader's attention may as well be directed.

It may be needless to remark particularly on the state of the Serpentine, which has lately attracted so much attention; or on that of Buckingham Palace, the drainage of which has been described in such glowing colours of abomination, as “reeking with filth and pestilential odours,” by the refined and disinterested layers-general of Informations to the Metropolitan Sanatory Commission. From the evidence given by one of these very Commissioners of Woods and Forests before the Parliamentary Committee on Miscellaneous Expenditure in 1848, it appears that Windsor Castle had never been drained at all before 1846, and was then *in a state of the greatest filth**. The sum of £4500 has been since voted for draining it. But, though it does not appear upon the face of any of these reports,

* Query 2667.

and will, if it can, be carefully concealed, it is not the less true, that a large part of this money having been expended in laying down the much-puffed glazed pipes, and these not having been found (as might have been anticipated) to answer, they have been, or are about to be, taken up again. This is one illustration of the infallibility of centralized science, and of what the nation and individuals will have to pay, if they submit to be tied to the leading-strings of Commissioners of Woods and Forests, or Boards of Health, or Metropolitan Sanatory Commissions.

The brief sketch here given of the doings and management of this board gives but a very faint idea of what has actually taken place, and is taking place, under its fostering care. Those who wish to see the full working of the system cannot do better than consult the pages of the evidence taken last session on the subject, under as close a cross-examination as could be kept up, and therefore very reliable. The very large loans which have been exacted by this Commission "to ease the burden upon the estates of the subjects of this realm" shall merely be alluded to; as also the mode in which the solicitors to the Commission are themselves mixed up with these loans; both parts of which transaction are equally discreditable to the Board, and equally pernicious to the public interests.

Lastly; a very profitable speculation has lately been started by this Commission of setting up dormant claims; or, as it is phrased, "pushing with vigour its claims to the property on the foreshore of rivers and the sea;" it being calculated that this speculation "will form a very material item of increase*." It

* P. 17.

certainly has formed a very material item of increase in the bills of costs of the solicitors to the Commission, who are the only parties likely ever to profit by the speculation ; but who, *being paid by bills of costs and not by a fixed salary*, will be large gainers by the suits thus instituted. This is admitted, by the very terms in which it is stated, to be a *new claim*. It is being already set up on the Thames, the Mersey, and the Tay ; to the infinite mischief of the public, and hindrance of public works of the greatest importance, which, but for it, would long since have been executed at private cost. It will, no doubt, be set up wherever it is thought that any thing can be made of it. The opportunity is taken of quietly *assuming* before this Committee that “ the general right of the Crown ” has never been disputed, which is a sort of Commission-of-Inquiry way of settling the question that will hardly do. The solicitor’s bills of costs will throw some light on the “ vigour ” with which these claims are being “ pushed*.”

The Commission of Woods and Forests, assuming as it does the mischievous functions of a Board of Works, calls to mind the Metropolitan Buildings Act, another of the centralizing procrustean measures of the present day, whose only effects are, or can be, multitudinous jobbing, private annoyance, and public evil. If the notion in which such an act originates were good, the act clearly ought not to be limited to the metropolis. But it is not good. It has no element of good. It is a purely procrustean attempt to tie up the hands of every man from improvement, or from adaptation of means to circumstances, and to

* See before, bottom of p. 201.

compel all to run in one beaten track prescribed by a few men who are, necessarily, unable to see or know all the circumstances of the cases which may arise. It has created an infinite amount of jobbing; and gives rise, as all such measures must, to endless daily frauds and to the practice of habitual deception. In fact, were not the act violated in every case where it is applicable, no new building could be put up, or alterations be made in old ones. The holders of appointments under the act are too wise to enforce its provisions. They cannot be blamed for the mischief of such an Act. It is not likely that they will refuse the good things it offers them. But, as they do not want to inflict needless annoyance on their neighbours, they are, very judiciously, careful to shut their eyes to facts, and take notice only of the fees. Were they to attempt to do otherwise the public indignation would not suffer the act to stand for a month. The prying, vexatious intermeddling which this act prescribes, in imitation of Excise Acts and all such Commissions, is, very prudently, not put in full practice. The act is daily many times evaded in every street and road in the metropolis. But those who have any thing to do with bricks and mortar, in however small a way, suffer confiscation; for the taking from them fees, under the pretences of this act, amounts to nothing else. Surely this monstrous and presumptuous assumption of the right of dictation and extortion cannot long be suffered to last. It is amusing to notice how the regulations which its infallibility prescribes, and even enforces under penalties, differ *toto cælo* from those on the very same subject-matter prescribed by other bodies assuming equal infallibility,

and whose schemes are also enforced under penalties. The public may hence form some judgement of what respect is due to either, or to any of the presumptuous procrustean schemes so rife at the present day, and which centralization is striving to enforce through the means of its ever-chosen instrument,—Commissions.

A Commission originating in as “fair flattering a preamble,” and “pretending to avoid divers mischiefs” as weighty, as any which has been lately projected, was the *Ecclesiastical Commission*.

This Commission supplies a happy illustration of the extent to which the Privy Council will indulge in statute-making if it find opportunity. It appears by the Report of the Committee of the last session of the House of Commons on this Commission that no less than 430 orders in council have been issued between 1836 and 1848 relating to the subject-matter of this Commission! Can anything be more monstrous?

It is quite impossible to go at any length into the doings of this Commission. And the great degree of publicity which has of late been given to many of its proceedings renders it the less necessary to dwell upon it. It is sufficient to remark that, if, as most assuredly is the case, jobbing has prevailed in every other Commission, it has prevailed to no less an extent in this; which the more excites disgust and indignation from the pretended purpose of the formation of the Commission, and from the peculiar nature and purposes of the fund which it is appointed to administer. The principal attention of this Commission has been directed to providing certain bishops

with magnificent palaces. This has been done with such zeal, that while £143,014 have been expended over eight of these, and £106,388 in augmenting a few bishops' incomes, the enormous sum of £5259 has been expended in augmenting 502 poor livings within the same dioceses whose bishops have had £143,014 spent over their palaces; thus showing only *twenty-seven times as much* spent in beautifying eight palaces of men already having princely incomes, as was spent in augmenting 502 poor clergymen's incomes.

This Commission, or that by which it is proposed to supersede it, not affording sufficient range for that jobbing which is the universal law of all Commissions, or for that government patronage which is the object of their appointment, the country and the church have, since these pages were nearly through the printers' hands, been further insulted by the appointment of yet another Commission of Inquiry into the same matters. We are told that the object of this new illegal Commission is to "inquire into the state of the law respecting the letting and management of ecclesiastical property, with a view to legislation on this important subject. The matters to be investigated are of themselves of a sufficiently extensive and complicated nature to require the deepest attention; and the persons selected for the task will not at all interfere with the duties or the construction of the Ecclesiastical Commission, but will be employed upon a field of labour and inquiry entirely distinct."

This Commission is, of course, intended to be the foundation of a second Ecclesiastical whig job. Already are clergymen deprived, by an act-of-parliament inquisition which can remind one only of that older

Spanish one which doubtless formed its model*, of every protection which the fundamental laws and institutions of their country afford; and, in charges of an ecclesiastic nature, they are to be tried by *ex-parte* judges, in secret, and with no power of challenge. Will they submit to having their means of subsistence yet further placed in the hands of government jobbers? Surely it is enough that their common sense and that of the country has been insulted by that former Commission of Inquiry which resulted in the present monstrous Ecclesiastical Commission, whose very monstrousness is now being sought to be made an excuse for the yet deeper job of a paid Commission of "three whig gentlemen of agreeable politics and easy disposition, and very thick with the Whig aristocracy."

Upon turning to p. 305 of the Appendix to the Report on Miscellaneous Expenditure (1848) we find that there is a Commission for auditing the Public Accounts which cost this happy and tax-paying nation, during the last year, the small sum of £52,008. It might be imagined that the accounts ought to be well audited for this sum. The "fair preamble" and pretended object of this Commission,—which puts into the pockets of five gentlemen the sum of £1200 a-year each, and into that of a chairman £1500, besides providing an infinite number of snug berths for faithful voters in pocket boroughs, &c. &c.,—were, to prevent "all *delays, frauds and abuses in delivering in and pass-*

* I forbear to dwell more than this on that mockery of justice the "Church Discipline Act," 3 and 4 Vic. c. 86; an act conceived in that spirit of despotism and contempt for all the rights of freemen and principles of justice which mark every step taken by the authors and upholders of Commissions and the advocates of Centralization.

ing" the public accounts *. How far does this Commission execute the duty for pretending to do which it itself annually takes upwards of £52,000 out of the public purse? Turning to p. 311 of the Woods and Forests' Report (1848) we find the following interesting piece of intelligence:—"The ledgers of the department have only been completely posted and balanced to 31st March 1839 [nearly *ten years* ago]; *all the ledgers subsequent to that date are deficient*, in consequence of the *entire omission* of the accounts of the agents or sub-accountants of the department. I need not point out that such omissions affect the *whole results of the books for the last nine years*. The accounts have only been made up and transmitted to the *Commissioners of Audit* for examination up to the 31st March 1843, being an *arrear of five years*." It appears, however, on turning to p. 38, that, though the Commissioners of Woods and Forests have not transmitted to the Commissioners of Audit any parts of even their incomplete accounts for more than five years, they have not been negligent in transmitting to them something else, any "delay, fraud or abuse in delivering" which the Commissioners of Audit would doubtless have visited with just indignation. It will be found, from the latter page, that four fat bucks, "in proper condition and of prime quality," are annually delivered, instead of their accounts, by the Commissioners of Woods and Forests to the Commissioners of Audit, as well as (p. 301) the same number of does. There do not appear to have been any arrears at all on this important point.

Again, on turning to the report of the Ecclesiasti-

* 25 Geo. III. c. 52.

cal Commission, we find that all the accounts of the architects, surveyors and solicitors were, after a period of at least eleven years' existence of the Commission, *altogether unsettled*.

How effectually does the Commission of Audit, which pockets £52,000 a-year and plants 187* people in the breeches-pockets of the nation, discharge its duties of "preventing all delays, frauds and abuses, in delivering in and passing the public accounts!"

It is impossible to pass over the Metropolitan Commission of Police. The Constabulary Inquiry Commission has been already noticed. There are few Commissions which more easily impose upon the unthinking than this. It is thought a glorious thing to keep up an appearance of order by means of this police. It is forgotten that peace and order may be produced by very different means, and may indicate very different symptoms as to the actual condition of society. We have heard of those who "made a wilderness, and called it peace." There is no doubt that the more completely the whole country can be reduced under the quailing dread of the iron heel of a military force, or of an armed police, the more completely will the appearance of order be preserved. But this is like every other case in which the authors of Commissions are unable to look at anything in any other than a purely *materialistic* point of view. They forget that no peace and order can exist, consistent with human action, energy, and progress, except such as is induced by genuine confidence between man and man, and

* The number given in the "Recapitulation" on p. 306 is 151, but the actual number, found by adding the individuals enumerated, is as above stated.

not such as is induced by a mere confidence in the restraining influence of brute force. To the end of that genuine confidence a noble and effectual means was that mutual responsibility which the ancient fundamental laws of this country imposed on every inhabitant of every local district. The subject is too large to open here, and is so ill understood in general that it would be vain to hope to make it clear without much detail *.

The ancient and very efficient system lost the greater part of its vigour and efficiency through empirical legislative tinkering, undertaken from time to time, in ignorance of the principles on which the system had been founded. By the careful adaptation of these it might have preserved its vigour and efficiency to this day. Without entering into the interesting institution of the *frið-borh*, or peacepledge, it will be sufficiently obvious that the duty of conservators of the peace will be best performed, in every district, by persons who have an absolute personal stake in the well-being of the district, and who are themselves directly responsible to the district itself for the maintenance of the peace within it†. That is the *principle* of the ancient law, and that principle is as applicable now as it was 500 years ago, or more. That principle is directly invaded and set at nought when a number of men are turned into a number of districts, all entirely irresponsible to any of those districts, and not having, necessarily, any stake in any of them; subjected entirely to the orders of one or two men also entirely irresponsible to any of those

* See this matter further alluded to in Chap. III.

† See Book I. Ch. III. pp. 121, 128.

districts, and whose offices are, on the contrary, solely, in the patronage of government. The system is essentially vicious. It is one consistent with arbitrary despotism only, and may, at any time, be made use of for purposes most dangerous to the liberty of the subject. Counteracting circumstances, and the high personal character of the individuals who happen to fill the office at any particular time, may, for a time, prevent all the evils from being at once manifested. But a careful observer sees evidence of their existence every day. Never were they more seen than in April of last year. With the best intentions, no doubt, a course was adopted on that occasion singularly injudicious, as well as illegal. Proclamations were everywhere posted calling attention to certain meetings, especially one on the 10th of April. Those proclamations were *the advertisements* of those meetings. It was they which attracted most who went to it; which most alarmed the timorous, and most delighted those who desired nothing so much as a disturbance and a breach of the peace. But those proclamations assumed to declare that a *contempt of them* would be a breach of the peace, an assumption only as monstrous as it was ridiculous and illegal.

Nor was that the only instance in which the Metropolitan Commissioners of Police have assumed to make or unmake the law. I speak from personal knowledge of the facts when I state that the act of parliament under which this Commission works is made by these Commissioners a dead letter, except so far as they choose to allow it to be put into operation. Some of its most important provisions are thus rendered quite nugatory. Like other Commissions, this

one thus assumes to itself a superiority over parliament itself, and that it is at its own will and pleasure only that any act of parliament is to have any effect or any force of law. It sets its own "discretion" altogether, and most mischievously, above the "law."

The expense might also be dwelt on, which is greatly increased by this centralized system of police. The police in the city of London, which happily withstood the attempt to impose the designed centralized police within its limits, is much less heavy than it is in the other metropolitan districts, though certainly as efficient.

The Poor-Law Board invites to much remark. But it is impossible to enter here, as it deserves, on such a wide subject of discussion. It is sufficient that, like the Police Commission, the establishment of such a board, and all the machinery of Unions and Assistant-Commissioners, invades that first principle of local self-government which it is so important to maintain in fullest vigour. The hardship of this system to the poor is unspeakable; their sufferings, in consequence, are cruel in the extreme. £98,527* per annum does this centralizing machinery cost; and the amount is on the increase, as in every other of the professed *economical* contrivances of centralization. So much does the country pay for a system whose only effect is to debase and depress the honest labourer below the level of the vilest criminal, and to carry to the extremest point what Lord Coke, speaking of another centralizing scheme two centuries ago, well-called the "*grinding of the face of the poor.*"

* This includes only the salaries, &c. of the boards; postages; and salaries of auditors. The total expense in 1848 was £236,000.

In the manufacture of the existing Poor-Law system its authors were over-nice. Regarding, as they do throughout every scheme, materialistic considerations only, it would have been far better if they had at once adopted Professor Teufelsdröch's suggestion. "The old Spartans," says he, "had a wiser method, and went out and hunted down their Helots, and speared and spitted them, when they grew too numerous. With our improved fashion of hunting, now after the invention of fire-arms and standing armies, how much easier were such a hunt ! Perhaps in the most thickly-peopled country, some three days annually might suffice to shoot all the able-bodied paupers that had accumulated within the year. The expense were trifling, nay, the very carcasses would pay it. Have them salted and barrelled ; could not you victual therewith, if not army and navy, yet richly such infirm paupers, in workhouses and elsewhere, as enlightened charity, dreading no evil of them, might see good to keep alive ? *"

Allusion to the Poor-Law Board leads to some notice of the system adopted as part of its machinery, but which is also a general favourite with the authors of Commissions ; namely, that of *Inspectors*. We have inspectors, under one name or another, of an endless variety of matters. It is but one shape of the Commission system, under another name. It has, necessarily, every vice and mischief of every part of the Commission system, and has no single recommendation. One form of it has been already noticed in speaking of the "preliminary inquiries" under the Local Acts' and other Bills †. How, and to what good end,

* Sartor Resartus, Book III. ch. 4.

† See p. 229, &c.

inspectors are employed may be seen from the following extract from a paper of deserved reputation, and which, though just now a great supporter of the views of the Commission school, is continually showing, in a very striking way, how truth will sometimes force itself unawares upon the mind in spite of every circumstance and influence tending to shut the eyes, for a time, to its ingress. In speaking of a decision by which "the Ten Hours Bill will become in a great measure a dead letter," the writer says, "This is a very important decision. It is, in fact, the judgment of the common sense of the magistracy against the whimsies of the legislature [read *centralizers*]. There is no doubt that the Ten Hours Act was expressly shaped to prevent the relay system, its authors having deemed it just and wise to guard against the overworking of one moiety of the non-adult operatives by forbidding the employment of the other; dooming A and B to hunger lest C and D should labour for more than the time prescribed by act-of-parliament humanity.

"Magistrates who have to pay poor rates, if not to administer the poor laws, resolutely oppose themselves to the enactment in question; thinking it too monstrous, upon the first revival of trade, to circumscribe the employment of the poor, or, *under the pretence of care for them*, to snatch the bread from their mouths.

"We shall see whether the legislature will dare to follow up its intention with a declaratory act, or any more stringent and unequivocal clause in amendment of the Short Time Bill. We do not believe it will venture to do so. After the distress that has been suffered for the last three years, the repetition of the

command, 'Thou shalt not work,' would not be borne. The delusion of the short time bubble has now passed away. The workpeople have found out that the same wages cannot be had for reduced time of labour ; and, instead of the blessed moral consequences which visionary philanthropists expected from opportunity of leisure, there have been only idleness and debauchery. Much stress was laid on the advantage of relegating women from the mill to their domestic duties ; but woful experience shows that, turned from the factory, they have been driven to seek their bread in the streets. The whole experiment is, in every respect, a dismal failure*."

This language applies quite as fully to every and any part of the Centralizing and Commission system as it does to the Ten Hours Bill, which is but one illustration of that system. It has fortunately happened that the mischiefs in that case have been more quickly developed than in some others. But the same mischiefs must follow in every case ; and, the longer they are in their development, the more extensive will they be in the end, because more deeply worked into the social and political system. It is to be hoped that the early exposure, in this instance, of the worse than idle folly of that sentimental philanthropy which is now stalking abroad with such presumptuous self-complacency, will do something towards calling attention to the inherent viciousness and mischiefs of the whole centralizing system which that sentimental philanthropy delights to call to its aid in order to enforce its own ever materialistic notions of "act-of-parliament humanity."

* Examiner, January 6, 1849.

This device of Inspectors is, like the other parts of the centralizing system, not original. It is borrowed from those continental nations whose system has so long been the especial admiration of the authors and friends of Commissions ; and the prevalence of which system directly led to those scenes which the past year witnessed. The indignation will not be forgotten which was excited when certain propositions were made by General Cavaignac's government, *under exactly similar pretences as all whig Commissioners and Inspectors are appointed*, to send "Commissioners" and "Inspectors" into the different departments of France to "obtain information" and to inform and instruct public opinion. Well did one able member of the Assembly exclaim that "it was an insult to the representatives of the departments, which were to be inspected by other representatives who were strangers in those departments ; and that the measure was especially bad, inasmuch as it reminded the people of the representatives sent on a similar mission by the committee of public safety." The whole assembly united in considering the proposition as the re-commencement of the old system of violence, intimidation, and espionage. Another member thus eloquently denounced it : "What," said he, "was a representative to enter his department, *and, after a fortnight or a month's sojourn there, to pretend to know the real spirit which animated the population* as well as he who represented it ? Again, were representatives to go on a roving Commission* over the country, with pay for their trouble out of the secret service money ? The

* See ch. 1 of this Book, p. 203, for Lord Abinger's opinion of "roving Commissions."

Minister of the Interior was about to send off Commissioners also, like one of his predecessors. Let him beware :—*Commissioners are not in good odour.*”

These remarks apply alike to every subject-matter. The whole machinery of Inspectors, Assistant-Commissioners, or whatever else they may be termed, and to whatever they may be applied, is illegal and vicious, and can only produce mischief. It is part and parcel of that centralizing system whose aim is to reduce all men into that state of “half development” of the faculties which shall enable them to be driven hither and thither, at the will of a corrupt and jobbing government, like any “herd of animals.”

The most recent act-of-parliament general Commission which has been established is that in which, as might be expected, the vices of the whole system are most strongly and mischievously marked. It will be unnecessary to remind any thoughtful reader that the Board of Health is the Commission alluded to ; though the specious disguises under which that most dangerous instrument of centralization has been carefully covered have as yet hidden from many its true aspect and proportions.

What was the “fair flattering preamble, pretending to avoid divers mischiefs,” under which this measure was brought forward is well known. It is unquestionable that that “fair flattering preamble” imposed on great numbers, who really, and in true sincerity, desired to see something done to promote improvements in the public health. Such persons did not trouble themselves to examine the bill itself. The name was sufficient; and petitions were signed in favour of that name without the least knowledge of what was the

nature of the measure itself. That measure was urged and supported throughout by false pretences and by deliberate falsehoods and manufactured evidence. As some of this has been already noticed it is forborne to be further dwelt on here.

Had there been the least sincerity in those who framed the Public Health Bill it is impossible it could have borne the shape it does. If a Public Health measure is wanted at all, it is wanted all over the kingdom. It is ridiculous and preposterous to pretend that the " preliminary inquiries " which this act, like others which have been noticed, enjoins, could have had any other object or end than the promotion of jobbing and the increase of government patronage and influence. Any true and honest Public Health measure would have been universally applicable at once. But the whole course adopted on the introduction and carrying through of this bill showed very clearly what the capacity and knowledge of their subject of those who appeared before the public in the matter were, and what were the real ends of the unseen movers of the machinery, who made many sincere but easily deluded men their dupes. Not a word was said of the existing law as applicable to the subject, and which, it is self-evident, was the very first thing which ought to have been carefully considered. All the parties who appeared before the public in the matter exhibited their utter ignorance on that important subject. I have elsewhere* shown at length that the law of England has, from the earliest times, provided most fully for the public health ; far more fully and completely than the Public Health Act, or any

* Laws of England relating to Public Health. S. Sweet, 1848.

such act, does or can do ; that the law relating to that subject is peculiarly marked by that characteristic which always distinguishes a law based on a true *principle* from one that is merely empirical,—namely, that it is *adaptable* to all changes of circumstances ; that no sooner can it be shown that any thing or proceeding is injurious to health than that thing or proceeding comes within the definition of what the law has declared to be illegal. There is no law clearer or simpler ; and never was there any movement which might, *if earnest and honest*, have so entirely carried along with it the immediate and active co-operation of the existing law as the sanitary movement.

But the real object, an object to gain which many honest men were made the mere tools, was to open a boundless field of jobbing ; to seize a favourable opportunity for the very widest extension of the centralizing principle ; to destroy, as far as possible, every remnant of the principle of local self-government throughout the land. The Public Health Bill was a bill to legalize universal jobbing, to create universal patronage. Hence an army of government-appointed Inspectors to enforce upon the land all the narrow and procrustean schemes and crotchets of a central board ; hence the pretended necessity for a “ preliminary inquiry ; ” hence a central board with universal control over all local boards, guided solely “ by the uncertain and crooked cord of discretion,” and to whom every local body was to be in complete subjection, and to which was given a power of indefinite taxation at their mere will and pleasure. In the true spirit of such a system absolute powers of confiscation were given, and absolute and arbitrary power to invade the dwell-

ing of any man, and to damage and destroy his property to any extent, without any pretext or cause whatever, barely even of that "information" against which Coke so justly protests*.

There is no remark which has been already made on any one of the wide family of Commissions which does not find its application in this measure ; a measure the more iniquitous on account of the false pretences under which it was obtained. The loudly-expressed indignation of those who really were in earnest on the subject of sanatory improvement, and had taken the trouble thoroughly to investigate the bearings of the question, produced, it is true, many and important alterations in the Bill before it became an Act : but the broad mischievous principle still remains its mark. It remains, though more insidiously than before, the most mischievous Act that ever was passed in this country ; the most direct legalization of universal jobbing that ever was attempted ; the most dangerous instrument of centralization that has yet been succeeded in being enforced upon the country.

It is impossible to enter into a full examination of this mischievous measure. The public has already had some opportunity of judging how it carries on its works. Presently its "Inspectors," properly in-

* It is impossible to enter, in a brief space, into all the outrages on the commonest principles of justice which were contained in this Bill. Some of the most flagrant would only be thoroughly understood, unless by aid of long explanations, by the legal reader. It is sufficient that every protection afforded by the fundamental laws and institutions of England to the rights of private property were entirely taken away, in order to give free scope throughout England to the unchecked and arbitrary practices of the irresponsible nominees of the Central Board.

structed, will go forth to hold their "Preliminary Inquiries," in which the truth can, of course, never have the slightest chance of being heard or got at, however honest any of these successful strugglers in the "wretched competition for the selfish prizes and the petty vanities of office" may chance to be. Even should their *ex-parte* reports not, in any case, exactly suit the taste of the Central Board, on whom they are the dependent nominees, the latter is not in the least degree bound by them, and will impose its own crotchets on its helpless victims, who are to be further insulted by the mockery of a packed and subservient "*local board.*"

What a different scene would have been presented had men in earnest for sanatory improvement organized themselves into bodies to put the law in force in every instance in which they found it to be infringed; and gone on ceaselessly pursuing this course till all perceived the benefits derived from the result, and how truly the law is, and ever has been, the protector of the public health, and that it needs but to be invoked to ensure that protection! Then would it have been felt by all that the hearty co-operation of local bodies was the only one thing else needful; and the general sense of the importance of the object would have speedily secured the doing away with those obstructions which now impede the free action of local bodies. The end would have been far sooner gained by such a course than by any Public Health Act, were it possible that the pretended aims of such an act can be carried out, which every one knows they cannot be. But no; such earnest, real, self-depending exertion has never yet suited the taste of sentimental philanthropists, and never will do so. They prefer to draw

up plans and schemes and reports in their closets, and to go about to try to enforce these on the country by the centralized machinery of packed Commissions. It is a humiliating and a painful spectacle. No patronage or places would have been created by the former course. All that would have been done would be really and effectually and rapidly to promote ends conducive to sanatory improvement. Such a course could never, therefore, meet with any favour from a government which—whether consciously or unconsciously—sees, in every object, utility or not only in so far as it affords the opportunity or not for increase of patronage and places.

It would be a task by no means grateful, though easy, to criticise the course which the so-called Board of Health has pursued since its appointment. There are very few, not being determinedly prejudiced in its favour, who do not already see the emptiness of its pretensions and the preposterousness of its presumptuous claims to infallibility. The alarms of the weak have been aroused, and the apprehensions of the timorous have been trifled with, to exalt the importance of the board. We have been told “by authority” what we shall eat, and what we shall drink. Finally, the reading of forms of public prayer has been urged—appropriate only to circumstances of the ravages of “plague and grievous sickness”—at a time *when the mortality has been almost uniformly below the average*, and when all the efforts of the board have not succeeded in stimulating the public up to a pitch of alarm or apprehension. Can any men have persuaded even themselves into the belief that all this is justifiable? In charity it must be hoped so.

This Board, like all others, would over-ride the House of Commons, and issues its edicts for all men to observe. It is happy that the country is not, however, yet so completely enslaved that these edicts command any attention except where other tools of a centralizing system lend their aid. Pompous as the language of the edicts is, the Board has no power to enforce a single one of the things which they thus "authorize and require." It is thought that the vulgar and the ignorant will be sufficiently imposed upon by an assumption of authority, and by forms of words and a display of seals. The course pursued copies, however, rather more closely than is prudent, though natural, that which every charlatan adopts. It is impossible to look at one of the decrees of this infallible Board, with its parade of autograph fac-similes, without being reminded of the signatures in like manner affixed to Holloway's Pills and Rowland's Kalydor, and "*without which none is genuine.*"

It is true that this Board of Health is now endeavouring to escape from general contempt under pretext that it is a Board of *Works*. This, however, only makes the matter worse. It has been already seen what sort of *WORKS* are those which are always done under government boards, and under that very Board whose chairman is to be chairman of this Board. Such illustrations might be indefinitely extended. The very assumption of such an office is a piece of monstrous presumption. The forced sale of the patent glazed pipes will, no doubt, be helped by this means, but no sensible man can doubt what the result must be of every such attempt to tie up the hands of enterprise and self-exertion; to take mankind into

leading-strings instead of offering every encouragement to self-dependence and to individual energy. The result can only be the failure of every work attempted ; the incurring, everywhere, of enormous wasteful outlay ; and the dwarfing of the minds and the degradation of the moral tone of those who submit to the presumptuous dictation and intermeddling of such a procrustean centralized authority, and to the experimenting upon them of the particular crotchet which happens, for the time,—for they are daily changing,—to be uppermost with the one or two favoured individuals who have the ear of the Board. In connection with this Board one characteristic job has already been seen. When the bill was being discussed, it was, after much said, determined that there should be three Commissioners, one of them paid. At the very end of the session, and when it was impossible for the country to know anything about it, a bill was introduced, in the first edition of which not a word was said about the design which afterwards appeared. After it had been thus introduced, and after it had been at least twice printed, and at a time when it was next to impossible that any one should see it or know anything about it, a clause was surreptitiously added, in the teeth of the previous decision of the House of Commons, giving power to appoint an *additional* paid member of the so-called Board of Health, who accordingly was immediately appointed. It is better to forbear any expressions as to this characteristic job. It would be impossible to dwell on it in any measured terms. The medical profession has suffered an indignity by it, and will, probably, not soon wish to meddle again with the Board of “ Works.”

This last-named act is open to other observations ; attempting as it does, in the very teeth of the fundamental laws of the realm, to give legislative powers both to the Privy Council and the Board of Health*. In fact, this topic of *Health by Act of Parliament* has been felt to be one by which sentimental philanthropists might be imposed on to any extent ; and to give the most available opportunity that has ever offered for extending the principle of centralization. Government has determined not to lose it. Another bill was hurried through parliament in the same way as the last, the object of which was the still further enforcement of the centralizing principle. It was thus hurried through under pretence of the emergency for the appointment of a Metropolitan Commission of Sewers. But no Commission was appointed for four months after the act had passed. The real motive for hurrying the bill through was the idea that it might so be passed under terror of the Cholera. I have elsewhere shown that the whole modern system of Crown-appointed Commissions of Sewers is a violation of the principle of law and common sense in which such Commissions had their origin†. It is unnecessary to enter here again on that subject. I will only add that, had this act, and that last referred to, had some regard to *principle*, instead of being empirical in themselves ; and had they looked to strengthening local self-government as their machinery, instead of seizing on the occasion for increasing government patronage and extending the system of centralization ; much good might have been done. In the present act, however,

* See before, p. 256, &c.

† Laws relating to Public Health, chap. iv.

not content with the patronage and jobbing which it necessarily placed in the hands of government and their creatures, it would seem as if its authors desired to mock at public opinion, and to avow their real intention to be only to obtain powers of unlimited and concentrated jobbing. The public is not yet aware how much money is being squandered by certain schemers on what are called “ experiments ;” really on all sorts of most absurd crotchets, and which can only serve to gratify individual vanity at the public expense. But, that no check might be placed over the expenditure or jobbing, certain provisions which were contained in the *Bill* were surreptitiously struck out—it will be observed that it is not that they were not, as usual, inserted, but that, having been inserted by some honest clerk, they were *struck out*—in its hurried course through parliament, and when no one would observe it. It is self-evident that the only object of such a proceeding could be the dishonest and corrupt one of enabling those who intended to have their own way in the Commission to carry jobbing to any extent they pleased. They have already had large funds in hand, *saved by the old Commissions which they contrived to supersede under pretence of their extravagance*, which will enable them to carry on a great deal of profitable “ experimenting ” and jobbing. When it is all spent, they will turn round, and, while they impose fresh heavy rates, will endeavour to charge the want of funds which makes that step necessary on the wasteful expenditure of those very Commissions whose carefully husbanded resources they are thus squandering.

With that natural partiality for the instruments and

machinery of despotism which there has been already occasion to remark as inherent in all schemes of centralization, and as especially shown by those who are striving to impose their own crotchets on the land as law under pretence of regard for the public health, the employment of *military* surveys is a favourite device of the infallibles under the Commissions last alluded to. Tenders were made by which the survey of the metropolis might have been made more cheaply, more accurately, and quicker. But no ; a *military* survey has charms for centralizers which all the greater usefulness, exactness, speediness, and cheapness of any other cannot counterbalance. It affords a foretaste of the system under which they desire to coerce the whole country into the adoption of their procrustean schemes. The men of Liverpool took the proper course. They paid no regard to the much-paraded ordnance survey, but ordered one of their own ; which was *begun and finished* while the military survey was still proceeding. Great wrath has this excited in the minds of the centralizers, and, as usual, the Metropolitan Sanatory Commission has gone out of its way to publish *ex-parte* evidence, by which the corporation of Liverpool is endeavoured to be implicated for having fulfilled its duty and had a real regard to earnest sanatory measures instead of submitting to the leading-strings of centralized authority*.

One other point in relation to the Metropolitan Commission of Sewers must be remarked on. The act is expressly declared to be only in force for two

* See the "Report to the Health Committee of the borough of Liverpool on the Sewerage and other works under the Sanatory Act," 1848, pp. 138-143.

years. Yet it pretends to give power to impose unlimited charges on the inhabitants of the metropolis for THIRTY YEARS. Can any thing be more monstrous ; more repugnant at once to common honesty and common sense, and to those fundamental laws and institutions which have been otherwise so flagrantly and unblushingly violated with the “ fair flattering preamble ” of the Public Health ? Truly will “ the purview of these acts tend, in the execution, to the great let, nay the utter subversion, of the common law, and the great let of the wealth of this land.”

I cannot close this chapter without alluding to one more illustration of the evils of the Commission system. That illustration is the management of the British Museum. I am not aware that direct jobbing can be laid to the charge of the Commission which manages this noble institution ; but I do know that the management of it is just source of dissatisfaction to all who have the interests of science at heart ; and I am able to speak, from personal experience, of the mischiefs which directly follow from that management.

There is in this country a large and increasing class of men, and whose increase is most desirable, who, content with a moderate competency, devote a reasonable number of hours daily to the pursuit of some manly calling, and the rest to the no less manly pursuits of science. To such men the British Museum, if properly managed, would be peculiarly valuable, as enabling them to pursue those investigations in which they take a worthy interest without that costly personal expenditure which is beyond their private means. But such men are, to a very great extent, now pre-

cluded from availing themselves of this valuable aid. And from the mismanagement which is thus felt by them the public is no less a sufferer.

To the most casual and thoughtless wanderer through those halls, the walk can never be without good fruit. None can pass an hour there without having more or less of self-humbling and, unless he be a very craven, at the same time of ennobling thought forced on him, as he sees ranged on every side around him the emblems of what man has done and thought through ages past, and, still more, of what man's Maker has breathed the breath of life into through countless ages before man was born; and, in comparison with the span embraced by which, the period of man's denizenship on earth dwindles to a moment. To the mere idly wandering observer it may perhaps matter little whether the stores of that collection be arranged or not with reference to the convenience of the student, or on any systematic plan. But to every inquirer, even the merest tyro in natural history, the case is far different. While, however, it is of the utmost consequence to the latter that the best possible availment be made of the materials here stored, there can be no doubt that even the casual observer is much more likely to become interested in the glorious truths of science, and to be ennoblingly affected by all the moral and intellectual teachings which these truths impress, if he see the whole arranged before him in one series, and on one plan, in which an obvious method and order are the guides. But no one who takes any interest in this institution can be otherwise than aware that the very reverse of this is the case; that over the whole of the arrangements there is no evidence of any unity of

idea ; that in many departments there is evidence of some very great remissness ; that, to speak of the department with which I am most familiar, there are, in the geological collection, many very valuable series of fossils which have been for years “ unarranged ; ” whereby the public, having paid for the purchase, is, in reality, defrauded of that purchase. Nay, in crypts and hidden corners there lie buried untold treasures, which it is of the greatest importance should, together with the heaps which lie in confusion on every side around, be at once arranged in order and in series, so that the most casual passer-by may unmistakeably read there, as he walks, the history of the ages of the earth before man was its inhabitant.

There are able men, some exceedingly able men, on the establishment of the British Museum ; men, too, personally most courteous and obliging in communicating information, or in lending aid ; and to whom I have had the pleasing duty of myself acknowledging my obligations. But it ought not to be a part of the duty of these gentlemen to *search* for any specimen or group when reference to it is wanted. It should be already in the place which belongs to it in the entire series.

As illustrations exemplify a point like this far better than mere observation, I will state two which have lately occurred to myself. It has several times happened to me to have occasion either to examine closely specimens which I knew were in the British Museum or to endeavour to find, there, objects of comparison. It is obvious that, in the latter case, specimens, however valuable, if hidden, are no better than if not in existence. How many objects of comparison

I may, owing to this circumstance, have omitted to see, I cannot tell, but am enabled, from what I shall now state, to form some guess.

It happened to me to discover a large and very interesting fossil in the chalk, which, so far as I knew, was undescribed and unique. With a floating idea of some affinity between this and another specimen discovered several years ago, I sought an inspection of the latter at the British Museum, where I knew it was deposited. I found it, not in any proper position in reference to any natural group or stratigraphical arrangement, but among a heap of "unarranged" fossils. I examined it with what care the obliging courtesy of one of the ablest of the curators gave me the opportunity to do. A few weeks after I wished to re-examine it. I sought it in the same place, but it was gone. Nowhere could I find it, nor have I ever since been able to do so. This was a large and valuable specimen. It is all safe, *somewhere*, I have no doubt; but it ought many years ago to have found its place, in due connection and series, and there to have remained undisturbed.

Again: it happened to me to be investigating the structure, affinities, and general characters of a most interesting group of fossils, whose true structure, characters and affinities had theretofore been unknown. I was aware, by private means, that a number of individual specimens belonging to the group were deposited in the British Museum. These were, however, in vain sought for in any of the cabinets, either arranged or "unarranged;" and I was entirely indebted to the very obliging courtesy of one of the curators for the opportunity of carefully examining them. Now it happens that I have, in my private collection, by far

the largest, and indeed the only complete, series of these fossils that has ever been, or probably, from its difficulty, that ever will be, made. The series in the British Museum is very incomplete, besides being totally unarranged. I should have been very glad to have volunteered the arrangement of the latter, and to complete it to a great extent from my private cabinet ; but I felt that, in the present state of this branch of the Museum, such an offer would only be throwing away time and specimens both of which were valuable. I have been obliged to publish this as my reason for not making the proposition*. Such is an illustration of what opportunities of improving the completeness, and consequent usefulness, of the national collection, without any expense whatever, are lost through the present management, or rather mismanagement, of the British Museum. The Museum of the College of Surgeons presents such a contrast that the student is glad to add his mite to its stores.

And the fact of this mismanagement is owing to the British Museum being given over, like every thing else, to a Commission. The members of that Commission are very honourable men, and very aristocratic ; altogether unimpeachable, so far as I know, in any point of integrity. But they have no personal and individual responsibility fixed on them for the management of this most important institution. Nor have they, as a body, the peculiar knowledge or experience necessary to its supervision.

* "The Ventriculidæ of the Chalk : their microscopic structure, affinities, and classification." By J. Toulmin Smith, 1848, p. 43 *note*. It is my intention, instead, to present an illustrative series to the Museum of the Royal College of Surgeons.

The British Museum ought, like every thing else, to be entrusted to some single head, directly responsible to the nation, through parliament, for the general management and arrangements. This chief, as well as all the heads of the several departments, and all the assistant curators, should be well paid ; so as to offer an inducement to men of attainments to seek such opportunities of advancing the interests of science and promoting the mental and moral elevation of the public mind. At present a pittance of so many shillings per diem is doled out, hardly equal to a groom's wages ; and payment of which is stopped for every day's absence through illness or other cause. This will hardly be believed to be possible in such an institution ; but it is true ; and it is most disgraceful. Many and many a jobbing Commission has its crowds of officials, all extravagantly paid for services which are nominal, useless, or mischievous. But, because the class of men who follow science are least likely to be the subservient tools of any government, and because their appointed service does not offer tempting baits for the idle offshoots of aristocracy, the most important public single institution in the country is thus niggardly endowed ; and those on whom it depends entirely for its usefulness are treated like hired menials. It is an outrage upon civilization, and a bitter satire upon a government which parades *education* with much self-glorification as a political password, that such things should be.

The single head, and all the heads of departments, and all the connected offices, in the British Museum, should be the rewards which the nation gives to her highest names or most deserving labourers in the

field of science. They would be rewards worthy of a great nation, and worthy of those who have sacrificed years to the search for truth; and who would value such positions, not for the "selfish prizes or petty vanities of office," but chiefly for the opportunity thus given of more successfully following up that search for truth to which they were devoted, and of giving to the public the immediate and best fruits of that search.

These suggestions seem so obvious and simple, that it cannot be long before they are, in some shape or other, carried out. I purposely forbear to enter on any details, or to point more particularly to the cost which has been entailed upon the nation by the establishment of a *second* national museum of palæontology (*not* economic geology, as very usefully designed); and which could not have happened had the British Museum been properly managed, and the time, cost, and energies so successfully bestowed upon the offshoot been given to the parent.

He who unfolds to his fellow-men one single truth which has theretofore lain hidden has not lived in vain. It is worthy of a great nation, it is its honour and its perpetual solid glory, that it affords opportunities to every man of unfolding truth, by affording him every means that can be done for the development of those self-depending energies, by the putting forth of which alone the human race can go on in the course of improvement and of progress. Hence the value and importance of all those political and social institutions to which attention has been particularly called in previous chapters. And it is the same as to the furthering the development of those scientific truths,

the investigation of which is often, if not generally, attended with such cost that it is beyond the means of many who would otherwise be most valuable recruits. Hence the value and importance of all local scientific institutions ; and hence the importance of a single *national* institution like the British Museum ; which, without tying any man down to any mental or moral standard, creed, or system,—without any *centralization* whatever in its constitution or design *,—affords opportunities for observation and investigation which could not, else, exist. There is no money so well voted by the House of Commons as that for the maintenance of the British Museum. Were its amount fivefold it would be but a wise economy. But the public ought to see that an institution which, unless for the opportunity it affords of learning truth, is useless, does not itself fall a victim, as it is now doing, to a system the very elements of which are in themselves opposed to truth, adverse to its diffusion, and inconsistent with the existence or exercise of any energies by which truth shall be developed. The British Museum cries aloud, no less than any other public object of national interest, to be relieved from the depressing and mischievous effects of Government by Commissions.

A very few only of the Commissions which now

* Care must be taken that this be not attempted by attaching, under false pretences, lectureships, &c., under the patronage, *direct or indirect*, of government, to the British Museum. Such an idea has been uttered, and a centralizing government is very likely to grasp, too gladly, at it. Nor must any of the appointments whatever be allowed to be in the hands of Government ; or the British Museum will become a mere job, instead of a valuable national institution.

exist and are daily exerting their pernicious influence have thus been noticed. These few will, however, serve as samples. Far worse pictures might have been drawn ; but it is desired to avoid, as far as possible, personal allusions.

While immense powers are entrusted to these Commissions, affecting the weal or woe of every individual in the community, affecting taxation to an enormous amount, affecting all our most valuable institutions, the members of the Commissions remain utterly irresponsible. Nominated by the Crown, and not, as could be the only legal and justifiable course (though, even so, full of mischief), by the nation, they neither acknowledge, nor have, any responsibility to the nation. The annual "reports" which some of them lay before parliament are mere matters of form, even were purely *ex-parte* statements, as such must always be, worthy of any confidence. How the ostensible government of the day evades its legal responsibility by means of these Commissions has been already pointed out (p. 255). Thus is RESPONSIBILITY shifted off every shoulder, and the fundamental laws and institutions of the land are daily violated with entire impunity : while place and patronage are on the rapid increase ; jobbing flourishes in open vigour ; and centralization is spreading far and wide, and farther and wider, its ever-fatal influence.

The indomitable energies of the people of England have enabled them to struggle against disadvantages of the heaviest weight. It is in spite of these disadvantages that good order has been maintained, the national union held together, and national progress made. Channels have been continually found in

which those energies have, for a time, been enabled to exert themselves untrammelled by the system which has been shown to fetter down every thing it touches. But never, of late years, has any one of these channels been opened long, before the chilling finger of this system has been laid upon it. The numerous Excise Bills, the Ten Hours Bill, the Public Health Bill, and numberless similar contrivances are but illustrations of this unhappy truth. And the mischief is now beginning to be universally felt, and the attention of all classes to be called to it. It is devoutly to be hoped that discontent and dissatisfaction may not again fix themselves on untangible objects, which, if attained, can be followed by no lasting benefit. What is wanted is the unfettering of all individual effort; the taking off of those trammels that bind down skill and enterprise and all self-depending energies, and are daily binding them down harder; the release from the oppressive and presumptuous dictation of Commissions,—those chosen instruments of the arbitrary and degrading system of Centralization.

If this country is to maintain its position; if it is to be secure against such scenes as the nations of Continental Europe have beheld during the past year,—from their immediate disorganization and their following degradation; some must be found who, taking their stand on the Fundamental Laws and Institutions of the land, shall thus achieve that first and most essential step by which this country shall be relieved from the now all-prevailing incubus of GOVERNMENT BY COMMISSIONS.

CHAPTER III.

OF LOCAL SELF-GOVERNMENT.

"I will that each reeve have a gemote always once in four weeks, and so do that each man be folk-right worth."—Laws of Edward (the Elder).

"Let every man be in peace-pledge, both within the towns and without the towns."—Laws of Edgar.

"And let no man seek the king but if he might not have right in his hundred-gemote: and let each seek the hundred-gemote, under penalty; even as it is right to seek it."—Laws of Cnut.

"And for this were towns, boroughs, and cities founded and built, that they may be for a safeguard to the people of the land and for a defence of the realm: and therefore they ought to be maintained with all their liberties, and entireness, and jurisdiction."—Laws of William I.

THERE is something higher and better in the world than mere money-getting; and an effort nobler to be made than mere keeping out of the clutches of the law while getting wealth. With many people, however, and essentially with all of the centralizing school, these are held out as the grand objects of human existence. Their standard is purely *material*: their ideas can extend no further than that which is physical and bodily, and which has to do, in some way or other, with the providing for the body's wants.

Our Saxon fathers had different notions. "King Edward reminded his witan when they were at Exeter that they should all search how their peace [frið] might be better than it erewhile had been: for he

thought that less well was that borne in mind than it should be which he had before enjoined. He asked them, there, who to its amending would turn, and be in that fellowship that he was, and love that which he loved, and shun that which he shunned*.” Their ruling idea was of man as a social being; having his rights and duties as a social being. Every freeman testified his worthiness by being bound in peace-pledge [frið-borh] with his neighbours.

This idea prevails through all the institutions of our fathers. It made strong, in times of danger and of less available means than now, all the institutions of local self-government. It was indeed bound up with those institutions, and made the individual members who composed them *men* in a higher sense than that of mere selfish strife. It made each man in the community feel that he had a stake in the framework of society; a stake which he must maintain, not for his own sake only, but for that of all his fellows.

It has been already seen that the object of all the fundamental laws and institutions of England has always been, to afford the fullest opportunities for the development of every individual and self-depending energy. The system of local self-government has been seen to have formed an essential part of the entire political framework. What it prescribed was no finality, but the exact reverse,—the fullest opportunity for progress and for the continual more and more development of the faculties and powers of men. Never was a system devised which combined so admirably the securing of the safety and healthy tone

* 1 Thorpe, 161.

of the political union with the encouragement of every social virtue and domestic charity.

The observations which have been already made in the 2nd and 3rd chapters of the 1st Book render it unnecessary to make any general remarks as to the importance of local self-government. It is sufficient that the right of local self-government forms an inherent and essential part of the fundamental laws and institutions of this country,—granted and grantable by none, as some would ignorantly pretend, but the most sacred and valuable part of our “birthright and inheritance.” Without local self-government no such thing as self-dependence on the one hand or responsibility on the other can exist ; the existence of which in all the members of the community on the one hand, and in those to whom authority is entrusted on the other, is absolutely necessary to the maintenance of a really free state and of any real hope of human progress.

By local self-government is by no means meant the existence of cities, or town-corporations, only. The term, as well as the thing itself, had, anciently as well as now, a much wider range. It includes every local division, parish as well as city, rural as well as town, though it naturally happens that more importance usually attaches to the latter than to the former.

From the earliest times we find frequent mention of the “burg-gemote,” the “hundred-gemote,” and the “shire-gemote.” Each of these, as well as others which might be enumerated, was as well for discussion and consideration of that which was for the advantage of the particular local district, as for the adjudication of subject-matters of dispute. It is, however, quite

unnecessary to enter here into the various characteristics of the various local bodies, ascending from the tything to the county. It is sufficient that the system itself was the carrying out, on the broadest footing, and into every corner of the land, of the principle of local self-government.

In various records which were quoted in the 2nd chapter of the former Book, towns and boroughs were particularly specified. The reason of this is obvious. The original and sound test of being a free man, entitled to a voice in the gemote, was the being the holder of some actual stake in the country. In early times this could *only* be,—as in all times it will to a great extent, and the most securely, be,—the holding of land, the being a *free holder**. The rights of freeholders were universal, well-known, and undisputed. It was unnecessary to specify them, existing as they did over the whole length and breadth of the land†, and standing upon a basis which could never be mistaken. To them therefore we find *allusion as of course*, rather than direct reference. It was otherwise with towns. Their rights depended to a great extent upon factitious and changing circumstances, and needed, therefore, a continual recognition that they might be known. And this was the more necessary, in that there would always be gatherings of men near the residence of some powerful chief,—his servants and immediate retainers. These would necessarily be, for a long time, in a great measure under his control, as depending upon him for their opportunity of living on the spot, and for their means of subsistence. As, by degrees, others, not the immediate dependents of the

* See before, p. 49.

† See before, bottom of p. 122.

lord, were attached to the spot, and independent trade or other means of livelihood became established, exemption would, from time to time, be granted from what in strictness the owner of the soil might claim. Grants would be made to them, and releases given from those marks of servitude to a single wealthy and powerful landlord which, at the first, they necessarily bore. Such grants and releases are the only real charters which, valid as granted by a single person—be he king or other lord, can exist. They stand on quite a different footing from the so-called charters to which allusion has before been made*. Such towns would in time hold up their heads with those towns which had a very different origin; which had begun in an independent gathering together of freeholders, and among whose people the spirit of freeholders, and therefore of freemen, had always lived. As by degrees the existence of other actual stakes than the mere land was recognized in the latter class of towns, stakes, too, more liable to injury from sudden aggression than the land itself could be, these towns also felt it necessary to insist upon the most positive and clear recognition of their rights as freemen, whenever any solemn occasion of the declaration of fundamental laws occurred. Thus it happens that we find special recognitions of, and declarations as to, the franchises and free customs of all towns and cities, ports and boroughs.

It has been seen how William the Conqueror was obliged to acknowledge the independent jurisdiction of all local bodies†; acknowledgments which, as will be seen from the quotations at the head of this chapter,

* See p. 60.

† See before, p. 62, &c.

his predecessors had also often been obliged to make. It has been further seen how he was obliged to recognise the value and importance, both for the interests of trade and the safeguard of the people, of towns and boroughs, and to pledge himself to the maintenance of all their liberties. It has, moreover, been seen to be expressly declared in the Magna Charta of John that, as well the city of London as "all other cities and boroughs and towns and ports shall have all their liberties and free customs."

It might perhaps seem sufficient to leave this part of the subject without further illustration. As, however, local self-government is the special object, naturally, of the attacks of all centralizers, and as the antiquity of corporate institutions is denied by many, and misunderstood by many more, it will not be without its use if it is shown, by any single illustration, that the pretences of the late origin of such institutions, rights, and liberties are as false as any of the other pretexts by which Commissions endeavour to make out a case in support of the enslaving system which they are put in action to extend*.

From its position as the metropolis London has always attracted most attention, and its records, as well as its liberties, been best preserved. The illustration to be given will, therefore, naturally be taken from this city. What shall thus be done will only be as to the general point. It cannot be pretended to enter into any details; for properly "to treat of the great and notable franchises, liberties, and customs of the city of London would require a whole volume of itself†."

* See before, p. 164.

† Coke, 4 Inst. 250.

It is clear, from many allusions in the ancient Saxon records, that corporations, in the true and proper sense of that term,—bodies having, *as bodies*, certain rights and liberties,—existed in towns from a very early period, as they had done in tythings, hundreds, and shires from the earliest times. Many of the guilds named in the 2nd chapter of the former Book might make one such corporation. The corporation, as a body, often, if not always, possessed land itself, as individual freeholders did, the produce of which was applied to corporate purposes. The body thus existing was called the “*Burhwaru*.”

The city of London occupies at least as conspicuous a place in the Anglo-Saxon laws as she has done at any later period of history. In the reign of Æthelstan we find a very remarkable document, commonly called “*Judicia civitatis Lundoniæ*,” which fully shows the power and influence of the city at that day. It has been well remarked by an able Anglo-Saxon scholar that this document “seems to be the text of a solemn undertaking, almost a treaty of alliance, between the city and king Æthelstan for the better maintenance of the public peace* ;” and he elsewhere refers to this document as “proving clearly enough the elasticity of a great trading community, the readiness with which a city like London could recover its strength, and the vigour with which its mixed population could carry out their plans of self-government and independent existence†.” The same writer, in another place, remarks that “under Æthelstan, a prince who had carried the influence of the crown to *an extent unexampled in any of his predecessors*, we find

* 1 Kemble, 241, note.

† 2 Kemble, 334.

the burghers [of London] treating as power to power with the king, under their portreeves and bishop; engaging indeed to follow his advice, *if* he have any to give which shall be for their advantage; but nevertheless constituting their own sworn gyldships or commune, by their own authority, on a basis of mutual alliance and guarantee, as to themselves seemed good. . . . They had their own alliances and feuds; their own jurisdiction, courts of justice, and power of execution; their own market and tolls; their own power of internal taxation; their personal freedom, with all its dignity and privileges." And he adds, "In fact the principle of all society during the Saxon period is that of free association upon terms of mutual benefit,—a noble and a grand principle, to the recognition of which our own enlightened period is as yet but slowly *returning**." Observations to the same effect might be quoted from other able writers on the same subject†.

This record of the time of Æthelstan is too long to quote; but it is most interesting. It has continual allusions to a common fund for purposes affecting the whole *burhwaru*, and to the joining together to resist wrong-doing and to obtain right.

In the reign of king Æthelred we find another document which has much the same character as the "*Judicia*." Its title is "*De Institutis Lundoniæ*."

And, again, among the laws of Eadward the Confessor we find several articles under the head "*De libertate civium Lundoniensium*," in which, as in each

* 2 Kemble, 312.

† See *Wright* in the *Archæologia*, vol. 32, on "Municipal Privileges under the Anglo-Saxons."

of the other cases mentioned, are specified many important matters relating to the rights and liberties of the city of London.

Now it certainly is not a little remarkable that the documents thus cited are actually much more full and complete than any of the so-called Charters by which the rights and liberties of the City of London were (in reality) merely re-declared and guaranteed after the Conquest. These latter, so far from being the origin of the rights and franchises of the City of London, as is often pretended, are mere acknowledgments and re-declarations of what had existed, and been in the most formal manner, by several elaborate statutes, declared and confirmed, long before William's time.

But William the Conqueror, besides the general acknowledgments of the fundamental laws and institutions of the land which have been already noticed*, was obliged further to give special recognitions of the right and liberties of the City of London. The original Charter, as it is called, more properly statute, to that effect is still in existence in a perfect state. It is, as it ought to be, in the Saxon tongue, and is a most beautiful specimen of caligraphy. There were very learned clerks among the Anglo-Saxons.

This document is of such interest, in more respects than one, that it is proper to give it entire. Its brevity may well allow of this.

The following is the Saxon original :—

“ Wiſſm kȳng gret Wiſſm biſceop and Goſfregð portirefan and ealle þa burhwaru binnan Londone frenciſce and engliſce freondlice . and ic kȳðe eow ꝥ ic wȳlle ꝥ get beon eallra þæra laga weorðe þe gýt

* Book I. ch. 2.

wæran on Eadwerdes dæge kynges . and ic wylle þæt ælc cyld beo his fæder yrfnume æfter his fæder dæge. and ic nelle geþolian þ ænig man eow ænig wrang beode . god eow gehealde.”

Of this the following will perhaps be the translation which most exactly represents the literal idea of the original ; and which it is very important to convey as exactly as possible to the mind :—

“ WILLIAM [the] king greets WILLIAM [the] Bishop and GOSFREGTH [the] portreeve *, and all the BURHWARU within London, French and English, friendlily. And I declare to you that I will that both of you† be worth all those laws which you both were in the days of king Eadward. And I will that each child be his father’s property-holder after his father’s day. And I will not allow that any man bode you any wrong. God keep you.”

Before making the few observations on the terms of this document which the present subject calls for, it is not unimportant to notice one point as to the general character of the document itself.

It has been already remarked that the history of William’s reign has not generally been considered in a sufficiently philosophical spirit‡. This document supplies apt illustration of the remark. Instead of its being the haughty expression of a tyrant’s will, in the style assumed in dictating to a conquered people, it contains internal evidence, not only in the language in which it is written, but in its phraseology, that, even in the *mode* of recognition of the rights and liberties of the people, William was obliged to conform himself to

* That is, the *reeve*, or chief magistrate, of a *gated town*.

† *Get*, dual of *þu*.

‡ See before, p. 57.

Saxon usage. It is only very recently that the means for illustration of this interesting point have been presented to us. In the recently-published volumes of the "*Codex Diplomaticus Ævi Saxonici*," however, we have full materials for comparison. And we find that the form of the above-quoted record is precisely the same as the form usually adopted in the legislative acts of the Witenagemote in the reign of William's predecessor king Eadward. In proof of this, many instances might be cited. It will be sufficient, and at the same time will be exceedingly interesting, to cite some records there preserved relating to London itself.

Among the Anglo-Saxon records thus preserved are found the following:—

(No. 856.) "EADWARD kyng gret WILLEME bissope and SUETMAN mine porterefe and alle ðe burhware on Londone freondliche: And ich kúðe you ðat ich wille &c. And ich nelle &c."

Again:—

(No. 857.) "EADWARD king gret WILLEM bisceop, and LEOFSTAN and ÆLFSI porterefen, and alle mine burhðegnes * on Lundene frendlice; and icc kiðe eow &c. And icc nelle geðafian ðat any man &c. God eow gehealde."

Again:—

(No. 861.) "EADWARD king gret WILLEM bisceop, and LEOFSTAN and ÆLFSY porterefan, and alle mine burhðeynes on Lundene frendlice; and icc ciðe eow ðat &c. And icc nelle geðafian ðat any man &c. God eow alle gehealde."

These records vary only slightly in length, according to their subject-matter, from that of William the

* In No. 1331 (Hardacnut) the term used is "*burgensibus*."

Conqueror. It will be seen that their formal language, and the order of their formal parts, are identical with those of the latter.

It is not uninteresting to note, at the same time, another fact which is made clear from a comparison of all these documents with that of William ; namely, that while the bishop was appointed probably for life, the portreeve was a temporary appointment only. The same William is bishop in all the documents both of Eadward's and of William's time. In each of two of the former and in the one of the latter, however, the names of the reeves are different ; in the remaining instance the same names are repeated as in one of the former instances ; these two being, probably, from their tenor, acts of the same year. This circumstance is an extremely important one, affording very strong evidence that, at that time, the portreeve was, in point of fact as well as constitutional principle, annually elected by the *burhwaru* ; conclusive evidence that it was a periodical office only, and not one held for life.

By this Charter of William, then, the citizens of London are declared to be possessed, as an inherent right, of "all those laws which they were in king Eadward's time." The word "weorðe" has much more force than "*entitled to*," as it has been frequently translated. The word often occurs in the Saxon laws* with the same meaning as in this in-

* Thus "Læte beon æghwylcne man *rihtes wyrðe*." *Laws of Æthelred*, V. § 1 ; and, in the motto at the head of this chapter, "Gedon þ ælc man si *folc-rihtes wyrðe*."—*Laws of Eadward the Elder*, § 11. So ;—"Ælc man si *folc-rihtes wyrðe*, GE EARM GE EADIG."—*Laws of Eadgar*, II. § 1. Many other instances might be quoted.

stance. It implies absolute enjoyment and possession—*not a bare title*. These ideas are very different, and imply very different states of facts. We still use the word. A man is said to be "worth £500 a-year;" that is, he is in the absolute enjoyment of that income. We talk of a "pennyworth," or a "poundworth;" meaning thereby that which a penny or a pound will absolutely bring. The expression therefore of "entitled to" or "worthy" does not convey by any means the full idea of the original. The citizens are not only to be "worthy" of, or "entitled to," the laws,—but they are declared to be "*worth*" them, as a *positive having*. The expression has been used in the course of these pages of certain men being "*law-worth*," in Latin, "*legales homines*." The meaning is the same. They are the men who, *being free*, and showing by their self-depending energies that they are worthy to be free, have the fundamental laws and institutions of the land as a part of their possession, their heritage and birthright. It is the nearest equivalent to "freeman;" but a word of even more force and meaning. It is the noblest title that a man can bear. It is a declaration that he is born to certain RIGHTS, and to the necessarily connected discharge of certain DUTIES; that self-dependence and neighbourly charity are, together, the essential conditions of his being.

No man can be "LAW-WORTH" in a despotic country, or in any land in which Centralization has been allowed to gain any footing whatsoever. "The incertain and crooked cord of *discretion*" is altogether in antagonism, cannot exist together, with "the golden and straight metwand of the *Law*."

In the above record it is further declared that all

the burhwaru of London are worth "*all those laws which* they were in king Eadward's time." This is, then, a simply declaratory statute, as we have seen that so many of the statutes are in which are embodied the fundamental laws and institutions of England. "I will,"—that is, be it hereby known,—"that your rights and liberties remain as they were before I came here." The Norman "conquest" in no degree affected the full enjoyment of those rights and liberties which had been secured to the citizens of London by ancient custom, or by any of those records which have already been named of the time of Æthelstan, Æthelred, or this very Eadward.

But it was, further, an especial distinction between the free and the unfree man that all the possessions which the former had were his own. The law guaranteed their inviolability; and, being a *law-worth* man, it was further *guaranteed* to him that, after his death, his children should have them. That which the unfree man had, on the contrary, was his only in usufruct. After his death his lord had it again, unless, of his grace, at his "*discretion*," the child was still allowed the use of it. The distinction is of the utmost importance. As we therefore find, on numberless occasions, that, in declaratory statutes, some of the most important rights, especially such as were thought to be in some danger of attack, are reiterated, so, in this remarkable document, the citizens of London had the prudence to cause this express recognition of one of the most important marks of the free, the law-worth man, to be specifically inserted as a peculiar and unmistakeable "*badge of their freedom*" to all time. "Each child shall, after his father's death,

have as his own what his father had." It is his *by law*, and not subject to the *discretion* of any man or set of men.

It cannot but be felt that this document is not only of local but of national interest. It is evidence not only of the manly independence with which the citizens of London stood in the way of the conqueror of their king, and obliged him to yield obedience to the law before they would admit his own claim to the crown, but it is evidence, confirming that which has been before adduced, of the acknowledgment by William of the fundamental laws and institutions of Saxon times.

There are some who pretend to look upon such a record with a mere idle curiosity, as a piece of bare antiquity ; others who pretend to sneer at the setting of any value on an old bit of parchment. It has, however, been demonstrated in this volume that the laws of England are the noblest inheritance and best birth-right of the people of England, the truest *badges of their freedom*. It may not be needed now to secure a charter by any town or city as a pledge against the hostile incursion of an armed host ; but it has been already shown that encroachments and usurpations, openly hostile, are far less dangerous than such as are insidious and more slow*. The defence, the very existence, of our institutions, and especially of institutions of local self-government,—of every thing that is essential to the keeping any of the attributes of *law-worth* men,—renders it more than ever necessary now to be watchful and keep continual guard, if not against the onslaughts of an armed host, against the more

insidious, and therefore far more dangerous, attempts of no less eager, unscrupulous, and grasping, though less bold and open adversaries.

It is well known that the city of London closes the city gate at the death of every king ; and that admission has to be formally asked before the new king can be proclaimed within her walls. This is no empty ceremony, and ought not to be ever abandoned through any maudlin sentimentality of modern times. It is living and important evidence and symbol of those *rights* of local self-government which form the spirit of our laws, and of which the city of London has always been the steady and unflinching advocate. Those gates have, ere now, been shut to some purpose, against claimants to the crown. We learn, from the Saxon Chronicle, how, though the Danes “ fought oft against the town of London, yet, praise be to God, it yet stands sound, and they there ever fared ill.” And in the time of Æthelred, as well as later, the warlike deeds of the citizens of London kept the enemy at bay, and were the chief hope of the defenders of their country’s liberties ; the grand refuge of all who would be *law-worth* men. In the words of a recent writer, “ It must be stated to their glory, that, if we begin with their defence against the Danes in the tenth century, the citizens of London have been, through at least nine centuries, the constant, powerful and unflinching,—perhaps sometimes turbulent,—champions of the liberties of Englishmen*.”

If a stranger comes to England and asks where he shall see the noblest and worthiest sight within the land,—the one which shall most fill his soul with

* Wright, in the *Archæologia*, vol. xxxii.

thoughts worthy of a great and free nation, and leave him with the truest impression of the source of England's greatness and prosperity,—his guide, if he be an honest and true-hearted Englishman,—a real law-worth man,—will lead him to Temple Bar, and pointing his finger eastward he will say :—“ Yonder is the noblest and worthiest sight which England has to show. Yonder is the most wonderful spectacle which the history of the world can offer. You see, there, peace and order and prosperity reigning where they have reigned with few and slight interruptions for upwards of a thousand years. You see, living and moving, thinking and acting, there, men whose fathers have, for more than thirty generations, lived and moved, and thought and acted there as free and law-worth men ; who, ages before the time of the first of that line of kings which now fills the English throne, yielded a ‘ voluntary obedience to *the law*, for the sake of living, *under law*, in an orderly and peaceable community ;’ acknowledging no grant of rights from any man, but claiming, as their birthright and inheritance, that which they enjoyed, and which they have handed down to those whom you now see living and moving there. They have, through all time, governed themselves : therefore they have been well governed. They have ever been foremost in the race of human progress. They have ever displayed in their public works a generous liberality ; while their whole administration is marked by greater purity, less of anything like jobbing or corruption, and far more economy, as well as efficiency, than that of any other government or body, large or small, in the present or any former period of the world's history. Though

they have had many enemies,—as every one who walks in an unswerving path will have,—they have never been found vulnerable. It is their honour, and the highest tribute to their worth, that they are now the objects of the most bitter hostility and continual attack by the friends of Centralization and lovers of arbitrary government. They have been the champions of freedom and free institutions in all ages ; and, in times when most the cloud of arbitrary and illegal usurpation has darkened over the land, they have been tried and not found wanting. And, if they remain firm in that course which they have thus so long pursued, they may remain for yet another thousand years, and for yet another thirty generations,—a monument of the only safe reliance for human institutions, and a point round which all friends of progress and of human freedom may continually rally.” And the stranger, and every honest-hearted man, will earnestly rejoin, as the present prosperity and peace and solid well-being of that sight are gazed upon, “May no man ever bode you any wrong ! God keep you !” The prayer is not unneeded now. But it rests with the city itself whether it shall be vain. Its reliance must still be, as it has been, on its own energies and self-dependence. It has inherited a SACRED TRUST, no less than present blessings. It will be a breach of its most sacred duties, if, influenced by any views of temporary expediency, it consents to the relinquishment of *any* of those rights and duties of local self-government which it has inherited, and which there are many now only eagerly watching for the opportunity to snatch from it. *The general cause*, indeed, *of local self-government*,—and therefore of human self-

depending energy and human progress,—*is at stake in the maintenance of those rights unimpaired within the city of London.* By a firm, uncompromising, and earnest course she may resist every attack; and strengthen the cause of human progress throughout the land thereby. If she yield to expediency and to compromise, she will justly lose her own inheritance, and forfeit that proud place in the van of English freedom which she has hitherto filled so worthily. All that is needed is, that she be true to herself, and earnest in that truth*.

This is not the place to show in any detail how it is that the full rights and duties of local self-government, which anciently existed in every place, have in many points been impaired. It might otherwise be easily shown that it is to the intermeddling of empirical legislation that most, if not all, of this is due; by which, often without any express design of weakening certain institutions, they have lost much of their

* I feel it only proper to remark here, that there are few persons who have lived fourteen years in the metropolis who can know less of any *persons* within the city of London than myself. My knowledge, and the above expressions, have reference to *institutions*, not to *persons*. I can only respect *persons* in so far as they worthily carry out the spirit of those institutions; and any manifestation of the least disposition to compromise the latter would be the forfeiture of every claim to respect by the former. My earnest and active opposition to the prevailing spirit of centralization had begun and been, *at much personal sacrifice of time and money*, carried on long before I had ever even crossed the threshold of Guildhall, or knew, even by sight, any one of the functionaries of the city. In reference to this subject, and as bearing directly on the general topic of this chapter, I have felt it right to print, in the form of a note at the end of this chapter, some of the questions put to me on the occasion named in p. 221, with my answers thereto.

authority and dignity. To a certain extent they still exist, under one form or another, in every parish and county in England, though with far less of vigour and efficiency than they ought. The growth of modern towns has not been accompanied by the organization of those peculiar institutions which gave, and still give, such vigour and efficiency to London, while the decay of many ancient towns has caused their ancient forms of self-government to sink into little better than an empty husk, without vitality or use.

The right of *folk-mote**, however, though often attempted to be restrained and interfered with, is one which Englishmen have ever asserted and maintained, and still do actively exercise ; though not in that regular and periodical manner which might be done,—a defect which springs from the same want of the efficient organization of the local institutions of self-government.

Had the Whig government entertained any real wish for Corporation Reform, no more noble field could have been open for their exertions. The mode in which the matter was taken up showed, however, that, either they did not comprehend the fundamental laws and institutions of the land, or they were determined to treat them with contempt. This has been already dwelt on in the Chapter on Commissions of Inquiry.

That the state of many Corporations in the land needed alteration, and that right earnest, is not even to be questioned. But the mode of dealing with them was simple and obvious. No earnestness of purpose could, however, be looked for from men who began by one of the most daring and wholesale violations of

* See before, p. 51 and *note*.

the law, and of the commonest elements of justice, ever attempted in this or any country. The simple course to have adopted was, clearly, carefully to investigate, as a part of the personal duty of those to whom authority had been entrusted by the nation, the nature of local self-government in general, and the peculiar form of *representative* self-government which must always be, for some purposes, assumed in towns. Whether or not these existed in healthy activity, or in any shape at all, in many places, needed no Commission of Inquiry to ascertain, or rather to distort. A short and simple declaratory act should have been prepared, setting forth the constitutional and legal right to local self-government ; that, where the population exceeds certain limits, such self-government must, for some purposes, assume a representative character ; that some towns had grown up in negligence of the full exercise of the rights and duties thus inherent in all local bodies, while in other and ancient towns certain forms had usurped the place of the genuine institutions. The simple radical IDEA of what local self-government is, should have been thus promulgated in a manner which every one could understand ; which would have carried its own felt truth to every mind ; and which would have embodied permanent principles without entanglement with any petty details. Following this should have been the requisition to every place forthwith to put into active exercise the powers and duties of local self-government thus proclaimed, coupled with a very simple and obvious machinery for effecting this.

Such would indeed have been a re-invigoration of the Constitution ; a giving true effect to the funda-

mental laws and institutions of the land. But such a proceeding would have by no means suited the *liberal* notions of Whig statesmen. They adopted the course which, under analogous circumstances, they always have adopted ; and introduced, with much parade and pretension, an act which, while full, as usual, of endless peddling detail, just omitted the only two things which would have made it of any value. It was the play of Hamlet, with the character of Hamlet omitted by particular desire.

Mighty care is taken that the townsfolk shall, in no instance, run into mischief by making bye-laws for regulating matters which they alone can understand, unless with the previous consent of the Privy Council, who can by no possibility know anything about them, and who are *expressly prohibited*, by the laws of the land, from interfering in any such matters. Vexatious details as to the expenditure of moneys are dictated, which could only lead, and have unhappily led, to disputes and heartburnings. But the two things which alone were needed are, in effect, prohibited, in order to serve the ends of prospective centralizing aims.

Instead of the immediate and active exercise of the true and earnest rights and duties of self-government being universally enjoined, as it ought to have been if the principle be of any value, it is made *lawful* for His Majesty to grant charters, if the inhabitants of any town petition to that effect. Now the right of self-government is at least as much a part of the fundamental laws and institutions of this country as the Crown itself is ; and the existence and active exercise of such institutions are far older in this land than is

the line which now wears the crown. To speak of the *grant* of a charter of incorporation by the crown is about as logical and legal as it would be to bring in a bill for laying the first stone of London. The thing has been done for ages. Local institutions do exist. But the change of circumstances had impaired their efficiency. They wanted re-invigoration, freeing from those shackles by which empirical legislation has impeded their functions;—for, had the ancient local institutions of the land been untampered with, they were amply sufficient in themselves, and possessed the inherent power and certainty of adapting themselves to any change of circumstances. No *charter* could give the re-invigoration needed. But the empty vanity of officials was gratified by this provision, while the real want of the country was either not understood or not cared for.

Moreover it afforded another opportunity of increasing that centralized authority after which Whig governments have always striven, in, among other things, pretending to lodge the power of assent to the grant of such charters, not in the hands of Parliament,—to whom alone, if to any, it could belong,—but in the *Privy Council*. The direct violation of the fundamental laws of the realm contained in such a provision has been already so often pointed out, and is so clear, that it is unnecessary to dwell upon it.

Nothing certainly can be more preposterous than this idea of granting a charter. Local self-government does not consist in the names of mayor, aldermen, and common council. No charter could by any possibility convey anything more than special powers enumerated in the act. It is well-known what costly suits

and long and angry disputes have arisen out of this most absurd provision—this mere mockery of the pretence at corporation reform.

But, again, had the government been in the least degree in earnest as to corporation reform, it would, at any rate, have been made a *sine quâ non* that, wherever a true and real local self-government was called into existence, any conflicting authority should immediately cease, and its powers be vested in the re-invigorated legal and constitutional body.

A house divided against itself cannot stand. It is a mere mockery to pretend to give powers of local self-government to any place, when the very things needed to be placed under the control of self-government are already lodged in other and irresponsible hands, *and left in those hands*. The fact of the existence of such local irresponsible bodies, under special local acts, in itself implies that some, if not all, the most important matters for the welfare of the town have already been lodged in some hands, though the machinery be clumsy and illegal, as it always is. The matters committed to such hands are always, without exception, the very things for the management of which local self-government is most needed, and without which the pretended grant of any charter of incorporation must be an empty mock, and can only lead, and always has led, to heartburnings and angry collisions. And be it observed that no vested interests, no matters of property, were here concerned. A gas company, or a water company, is a useful trading company, which, like every honest calling, is of advantage to the public at the same time that it is of advantage to individuals. But paving, cleansing,

watching, regulating particular *modes* of lighting and supply of water, &c. are matters with which no trading company can have anything to do ; in which no vested interests, no rights of property, can be involved. The granting of local acts for these is never pretended to be for other than the public benefit. But those Acts are a very imperfect and clumsy, and really illegal, way of doing a very good and important thing. Because, however, men see in one day that those who went before them, while endeavouring to do as well as they could, have missed the true and simple way of doing it, there is no reason for abusing the men who thus, through ignorance, did only as well as they knew how. It is certainly not reflecting at all on Local Commissioners, to supersede them, *ipso facto*, on the assumption of local self-government. Every Local Commissioners' act is centralization on a small scale ; the ordering things on the procrustean principle instead of on the progressive and responsible principle. All Local Commissioners' Acts are in reality illegal, and in violation of the fundamental laws and institutions of the land. They subject the properties and interests of large districts to the will of a few irresponsible persons, nominated instead of elected, and who act only according to the "incertain and crooked cord of discretion," instead of by the "golden and straight metwand of the law." That such Local Commissioners have not done far worse than they have done, have not been infinitely more corrupt and jobbing than can be truly laid to the charge of any of them, is to be ascribed to the genuine honest straight-forwardness of English middle-rank character, which has prevented them from taking that advantage which they might have done of

the position in which, against law, they had been placed.

It is not in human nature, however, for men who are possessed of power voluntarily to resign it. No Local Commissioners will ever give up their powers, unless compelled to do so in some way or other. The 75th section of the so-called Corporation Reform Act is as much an insult to common sense as it is a deliberate declaration that the pretended powers of local self-government, in any place under that Act, are to be merely nominal, and not real. By that section any Local Commissioners "*MAY, if it shall seem to them expedient,*" resign the power and authority they enjoy!! How very kind! You may, if you like, solemnly promulgate a decree that the Czar of all the Russias "*may, if it shall seem to him expedient,*" resign his authority to an elected assembly. So much for the sincerity of Whig Corporation Reform.

What has been the necessary result? That, in places where charters have been applied for under this Act, there is no more real local self-government than there was before; that collisions and angry disputes take place; and that both parties rush, at last, into the lion's mouth out of mutual jealousy and hostility. Nothing could have been better adapted to bring the name of local self-government into contempt with the unthinking; nothing more calculated, or better contrived, to give an advantage to the interested strivers after centralization. You first carefully divide the motor nerve, and then upbraid the man for not lifting his arm. It cannot be doubted that centralizing ends dictated this Act*. The same parties who

* See also before, p. 200.

introduced it have since, and especially during the last year or two, been using every effort to vilify and traduce and ridicule every form of local self-government. Having carefully tied it up from the possibility of putting forth its inherent strength or energies, they turn round upon it and abuse it for the want of exhibition of those energies. The fruit is thought to be now ripe. A Public Health Bill is introduced, which is in direct antagonism with every principle of local self-government. Towns which opposed that Bill upon just and honest grounds have, since, had the jealousies of their nominal local self-governments and of the old Local Commissioners stirred up against each other ;—and, in the heat of the antagonism and collision, *and animated only by that animosity*, both parties rush to their common enemy, and the enemy of all local energies and improvement, the Public Health Board, and ask to be brought within it. I speak of facts ; of most humiliating facts ; facts on which it is too painful to dwell, but which form the just triumph of those whose aims are universal centralization, and who dread nothing so much as, and who therefore have always endeavoured as much as possible to emasculate, independence of thought, feeling, and action ; impulses of self-dependence and individual energy ; and their nourishers and sure developers—institutions of local self-government.

There are many who confuse local self-government with these Local Commission Acts. If you speak to them of the importance and efficiency of local self-government, they meet you with an instance from their “ gude-town ” of the doings of some Local Commission Board. This confusion of two things diame-

trically the opposite of one another is actively encouraged by the interested urgers-on of the system of centralization and government by Commissions. It will have been seen, however, by what has preceded, that the presence of the one is absolutely inconsistent with that of the other ; that, where Local Commission Boards exist, there is not, and cannot be, any true local self-government.

The most important means to the restoring of the fundamental laws and institutions of the land to a state of wholesome vitality, and of preventing those violations of them which are now daily and openly made, is the infusing fresh vigour into the institutions of local self-government. It is not that this gives men the mere habit of expertness in conducting public affairs. That is a small matter, in truth, though much dwelt on by some writers. The main point is that men will not, when obliged to bestir themselves for self-government, longer live on traditions and "authority," instead of on true opinions and realities ; nor will they, so,—when they find out, as find out they always, sooner or later, must, that such traditions are a sham,—burst forth into irregular excesses, or give way to feverish and dangerous discontent. Every man, under such true and active institutions, necessarily feels that he himself is individually and personally an item in the state ; that he, and his opinions, not only have a right to be heard, but will be heard ; that any truth which he may have found out has the means and opportunity of utterance ; that his personal and local energies are not dependent on the favour and caprice of any irresponsible or distant body which can know nothing of the circumstances, and which,

however well-intentioned, can only be informed by partial views and one-sided representations ; which must, therefore, of necessity, be guided by such similitudes as happen to suit with its preconceptions, its “ anticipations ” ; while all the dissimilitudes—of which he well knows the existence—are hidden from it or unseen.

What can be a greater check or restraint on any enterprise, or on the exercise of any energy, than the feeling that, before anything can be done, the opinion or consent of a distant and irresponsible body has to be obtained ? Even where the institutions of local self-government have been imperfect, we have seen that progress has been made, and vast improvements worked out, by the energies of individuals. But when every proposition has to be submitted to a body unconnected with the interests of the spot, necessarily guided by certain speculative opinions, every individual energy and effort is most effectually chilled and discouraged. In no free country can the happiness or welfare of the community, or of a large number of the community, be allowed to depend upon the personal character of the individual who happens to be at the head of, or to have paramount influence in, any department. No man can call himself a “ *law-worth* ” man if the form which a particular branch of law shall assume can ever depend on the character of one or two men to whom its administration is entrusted. The “ golden and straight metwand of the *law* ” is a thing durable, changeless and secure : the “ incertain and crooked cord of *discretion* ” is liable to every accident ; unsafe, and unreliable, even for an hour.

Moreover, where the opinion or assent of any distant

or irresponsible body is required, instead of every encouragement being given to individual energy and individual enterprise, the only encouragement given is to sycophancy ; to following up the particular hobby or crotchet of the individual who happens to have chief influence there : the moral qualities stimulated are the very reverse of self-dependence. Enterprise and progress can only go on by the fullest activity, in every possible direction, of all the *different* faculties of the human mind. This can only be attained by *every* individual mind having every opportunity of free range and scope, undwarfed, untrammelled, unrestrained, by the consciousness that every thing must be made to square either with a set of prescribed rules or with the particular cast of opinions of any in authority. In every rightly ordered community the personal interests of every party will be on the same ground with his duties. Every man will be personally responsible to his neighbour, and hence dangerous experiment will be checked. Under existing things, and especially under such Commissions as the Metropolitan Commission of Sewers and the Public Health Board, many of those engaged know, and will in private tell you, of the folly and waste and inadequacy of certain means prescribed ; ay of their mischief : but they dare not publicly avow the fact, and expose the procrustean folly, for fear of losing their places : and what may be injuriously done is, in the same way, protected from its proper consequences.

Under true institutions of local self-government, every opportunity is given for the development of every man's own energy. If a newer and better adaptation is discovered, it can neither be silently suppressed nor

openly frowned down. It is secure of free and fair discussion ; and, if it have the character of truth, it is sure of ultimate adoption ; for the interests of all are identical with the adoption of the most efficient means by every one. There can be no systematic jobbing ; no getting certain schemes carried by private and sinister influence. Governments may pretend to be able to command the highest talent : but the whole pretence, and all the premises on which it rests, are a fallacy. As far as paying for it goes, they possibly may have resources ; but, practically, they never command the highest talent unless by a mere temporary accident. Mr. Mill well says, that “ All the facilities which a government enjoys of access to information, all the means which it possesses of remunerating, and therefore of commanding, the best available talent in the market, are not an equivalent for the one great disadvantage of an inferior interest in the result*.” But that is not all. It will always happen, without that personal corruption of the members of government which some are apt too hastily to ascribe to them, that, where appointments are left in the hands of one or two, or a few,—either the head of a department, any special board, or the small circle of a given ministry,—it is not the special aptitude that determines the choice ; it is, necessarily, and always has been and always must be, *favour*, *private interest*. Though *private interest* will always be used more or less under local self-governments, it can be so only to a very small and not mischievous extent. The comparison of the public works of this country with private ones, whether in point of cost or execution, will

* Political Economy, vol. ii. p. 512.

at once show the mischief of the former method. Westminster Bridge has been already mentioned. The National Gallery and Buckingham Palace are not particularly satisfactory examples of the success of the command by government of the highest ability. The doings of the Woods and Forests are further illustrations of the success of its command of the highest ability. If such buildings and doings are compared with the extraordinary improvements made by the corporation of London within the last half century in every single matter under their control,—including the very same classes of objects as those on which the Woods and Forests have made such frequent and abortive attempts,—the contrast is hardly credible.

For substantial works of public utility,—the consequence of naturally self-imposed checks against, and the general absence of, jobbing,—there certainly exists no body comparable to the corporation of London. The only thing needed in that corporation is the yet further pursuance of the course which it has been constantly proceeding in, and the *adaptation* of whatever matters may arise to changes of circumstances.

It is unquestionable that citizenship should be a matter not only of right but of *duty* to every payer of scot and lot. Though the corporation of London, for example, is in no sense a close one, or a “minority of a minority,” as has been falsely alleged; and though every man may, at his option, and at a very trifling cost, become a freeman; yet this is one of those things which, like other rights and duties, ought not to be left optional. Anciently it was not so: no man was “law-worth” who did not unite in the *peace-pledge*:

he could not claim the *rights* which the law gave unless he was willing to discharge the *duties* which it also called upon every man to fulfil towards his fellow-men *. That was a most sound and wholesome principle. It is the principle to which the corporation of London, and every other corporation, owes its very existence. That principle is openly and most dangerously violated when it is pretended that only *retail traders* are compellable to incur the responsibilities of citizens. The prosperity and usefulness—nay, the very permanent existence—of the corporation of London depend on the speedy settling of this matter in accordance with that ancient, sound, and unquestionable principle. It is notorious that very many men, and the number is daily increasing, now enjoy the privileges and immunities which a residence within the city of London gives, who yet refuse to take upon themselves the *duties* of citizens; and then, if anything takes place which does not happen to please them, they have the effrontery to abuse that which, if they had not been too indolent and selfish to discharge their bounden duties, might have been otherwise; or to which, at any rate, any objections might have been legitimately urged, and the consideration of them would have been ensured.

And unhappily this temper, the same as was noticed in the 1st chapter of the former Book † and in the 1st chapter of the present Book ‡, exists not only, or even chiefly perhaps, in the city of London. Everywhere we find very refined and exclusive gentlemen who

* See the extract from the Laws of Eadgar at the head of this chapter. Numberless other instances might be quoted.

† Pages 3, 6, 8.

‡ Page 172, &c.

would by no means mix themselves up with what they are pleased to designate as “ Parish Squabbles.” “ In-glorious and easy, they even rejoice at being spared ” the trouble of the folk-mote ; “ and forget that self-government is the inherent right and dignity of man in the *convenience* of having others to defend and rule them*.” It happens, somewhat curiously, that the most important of our existing institutions of local self-government are now parish vestries, though attempts have been too successfully made within a few years past to curtail the self-governing power of even these by Poor Law Boards and other centralizing inventions, as also by illegal methods of taking votes†. But still the local institution of the parish vestry does exist in every parish in England, and is capable of being availed of to very important purposes ; though far, very far, inferior to those institutions of local self-government which ought to be vigorously active everywhere. Every man is bound to take part, on any public occasion, in the affairs of his parish. It is a simple duty which he owes to his fellow-men. The occasions are certainly few, and the particular objects generally of a narrow kind. But church-rates have been in some places refused for twenty years successively by parish vestries. And this is, by no means,

* 1 Kemble, p. 189.

† I allude of course to Sturges Bourne’s Act and other like acts. The same provision—ensuring the oppression of the poor by the rich, the *packing*, in short, of a partial and unindifferent, instead of the free choice of an impartial and indifferent tribunal—is, consistently, made in the Public Health Act ; which, in every detail, as well as in its general principle, seeks to sap the foundations on which manly independence and local and national prosperity must rest. See before, p. 300.

the most important illustration of local control over taxation ; *a control, however, which Poor Law Boards, and Public Health Boards, and other similar Boards, practically take entirely away.*

And those who glory in a Public Health Act, or who would establish a “ Constabulary Force,” or support a Police Commission, in defiance of the true and only effective principle upon which protection of rights, liberties, and properties can exist,—a principle which it has been seen that even William the Conqueror was compelled expressly and explicitly to acknowledge*,—would take away every shadow of local self-dependence, of local control over any matters whatever. They desire nothing so much as that all men should sink into that state, so “ inglorious and easy,” in which the development of every moral and intellectual faculty shall be dwarfed, and men taught to boast of what is their greatest dishonour and disgrace,—the “ *convenience* of having others to defend and rule them.”

The habit of public meetings, the *folk-mote*, has always in this country supplied to some, though an imperfect, extent, the want of the regular institutions of local self-government which accident has placed in abeyance or not called into development. And very great good has been thus done ; and the influence of such public meetings upon the councils of the nation, on several occasions within the last twenty years, sufficiently proves how efficient the full and healthy development of the legal institutions of local self-government everywhere would be, in securing true responsibility, and in averting the danger of revolu-

* See before, p. 63.

tionary outbreaks. Centralization seeks to impose endless checks even on these public meetings.

We have, within the last year, been told much of the "ignorant wickedness" of riotous disturbers and threateners of the public peace; many of whom have paid a heavy penalty for their deeds. It is well termed "*ignorant wickedness.*" The wickedness exists because local self-government does not exist, as it legally ought in every district, by means of which every and any question and grievance could be raised and thoroughly discussed in an open and lawful way, and among those who know each other. Were that opportunity always present, we should hear no more of such "ignorant wickedness." Any man has a colour now for covering over any nefarious design with the pretence of political grievances. But, did the opportunity of fully discussing every political grievance exist, this pretence would be taken entirely away. Any man might freely express his opinion, and that in a mode which gave it its due weight in the state. Thus would the majority of opinions really command attention; and real *opinions* would be formed, after discussion, and men would not be guided by mere prejudice or "authority." Then would there be a real *public opinion*, legitimately expressed,—not a factitious one, irregularly declared, and based on *ex-parte* statements foisted on the public "by authority." The very pretence that the people are unrepresented would be taken away. They would be far better represented than they can ever be by any alteration or enlargement of the Parliamentary Franchise; which, unless *accompanied* by an increase of the felt right and *duty* of self-dependence, can never produce anything but mis-

chief instead of good. The full development of local self-government is incomparably more important to the national well-being ; to the independence of the people ; to the preservation of their rights and liberties from infringement ; to the maintaining the actual and continual responsibility of those entrusted with authority ; to the progress of the nation ; than is, or ever can be, the mere parliamentary franchise. Under a sound and healthy system of local self-government, parliaments cannot be corrupted and reduced under government influence, or be swamped by placemen. The observations already made in the 2nd chapter of the former Book as to the time when local self-government was fully active in the land, apply here. The perpetual consciousness of a real and healthy public opinion, which could not be cajoled, would influence any House of Commons, however elected ; while that public opinion, and the means by which it was so healthily formed, would affect, in the same way, the election of the members, whosoever were the electors. The balancing of the true interests of the whole, and making a true unity out of these several really intelligent parts, so that there should be no antagonism between them, would be the high and noble task of Parliament under such circumstances. That unity is totally different from the unity of centralization. It differs from it as *synthesis* differs from *analysis*.

Local self-government can nowhere exist and be called into constant and regular activity, and so be not a name merely but a reality, without in itself producing men able and willing to originate new and valuable enterprise and improvement. Everything

tends to this end. Every moral feeling is roused, and beneficially so. Even self-love, instead of seeking the "selfish prizes and petty vanities of office," finds that its only gratification can be derived from devising some improvement, something to better the condition of a neighbour and a district.

And the circumstances of the present time offer peculiar advantages to institutions of local self-government for achieving their highest ends. The facilities of intercommunication must especially tend to make them more valuable and efficient. When a new discovery is made, it is valuable to the community in proportion to the rapidity with which the knowledge and the use of it can be spread abroad. Not only will every man in every town feel the possession of a direct interest and voice in the state, but a healthy spirit of emulation will grow up between neighbouring towns. No improvement can be adopted in one without being immediately known to others; and, being known, it will not be long let pass without being elsewhere adopted. It will be the interest as well as the duty of every corporate body to strive to the uttermost to discharge faithfully the duties of its office; and, *one body* in each place having in its hands the management of *all* the matters relating to the immediate well-being of the place, there will be no clashing of opposing bodies or selfish interests to obstruct the free discharge of every duty. But centralization deadens every such feeling of generous emulation; destroys every such incentive to improvement; and so damps every ardour for the progressive development of resources. Instead of a stimulus being given to enterprise and to talent, in the contrivance of the best

public works, and the devising of continual improvements, the theories and crotchets of one or two individuals are imposed upon all England as compulsory law ; and every suggestion, however excellent, which does not conform to such theories and crotchets is absolutely forbidden.

There is another excellent effect which institutions of local self-government will necessarily have, analogous to that spirit of generous emulation which will grow up between neighbouring towns. This is a habit of thinking and inquiring. Men cannot *discuss* without first having paid some attention to the subject-matter of discussion. As long as everything is done *for* them, they have no occasion to think at all. The masses will thus always become dwarfed in mind and their faculties only half-developed. But the moment they are thrown on their own resources, the moment self-reliance and self-dependence are made necessary to their very existence, they will wake from their torpor, put forth their energies, and rouse their faculties. It will become necessary that they should act ; and, to act, that they should think. The noisy demagogue, the interested disseminator of specious quackeries, has little chance among a community of thinking men. Such a school is infinitely better than any Privy Council education “by authority.”

And all this leads to another consideration, a consideration of great interest, and to which attention has been already called, as marking, in so striking a degree, the institutions of our fathers. The point alluded to is the peculiar *social* influence, for good, of all institutions of local self-government. They tend most strongly to cherish all the charities and kindly

feelings of good neighbourhood ; to destroy purely selfish impulses ; to make every man feel that he lives for others as well for himself ; to make him feel that there is truly something else worth living for and thinking of in the world besides mere money-getting, and besides mere selfish gratification. In the entire absence of all the true spirit of local self-government which characterizes the Whig Corporation Reform Act, the regulation of charities, even those which had before been administered by corporations, is taken from them. This was to be expected from men whose whole habits of thought are tied down to the simply *material*. It is carefully provided that such charities shall be handed over to irresponsible cliques, and so become, as far as possible, mere instruments of jobbing. Of course these, like all other public matters within local districts, ought to be entirely administered by the local and responsible self-governing body, which alone can be really qualified to judge of the proper objects for their appropriation*.

Local self-government forms the only true and legitimate “ organization of labour ; ” a union of the interests and energies of all for the sake of all, *while each enjoys the full fruits of the exertion of his own self-*

* Many direct instances of the lamentable mischiefs done by these centralizing tendencies of the (so-called) Corporation Reform Act might be cited. Like the recent sad Tooting tragedy, they are *direct results*,—more alarming than even the most prophetic of the opponents of centralizing measures ever dared to contemplate—of the Commission system. The poor and needy are robbed, as well as their children placed in fatal jeopardy. Under the true and *only lawful* system of local self-government there would be the surest safeguards against the likelihood—in reference to the Tooting tragedy, against the possibility—of any such cases.

depending energies. A cold calculating personal selfishness is the only moral quality cherished and relied on by the system of Centralization.

The very habit of continually meeting together to discuss matters of common good and interest begets feelings beyond the mere self. It promotes good feeling and good fellowship. It promotes, directly and indirectly, the development of all the social and moral feelings, besides that of the intellectual powers. Whig Commissioners may express virtuous horror at dinners, condescending to nothing except the receipt of salaries, of which those of any one Commission would certainly exceed all the expense of all the dinners of all the Committees of Management of the Corporation of London put together. But there can be no doubt that those social meetings which take place after the discharge of important public duties, and at which relaxation follows business, have really a very beneficial effect, and that they are anything but a loss even to the public purse. It is not a little curious that, more than nine hundred years ago, the kindness and charity hence engendered were appreciated in their full force; and the occasions of such social meetings took place exactly upon the same principle as they do to this day. In the remarkable statute already alluded to as made in the reign of King Æthelstan, after declaring the mode in which officers shall be appointed and shall manage the affairs of the guilds, occurs the following very curious clause:—

“ That we gather to us once in every month, if we can and have leisure, the hynden-men and those who overlook the tythings, as well with butt-filling as else as it liketh us, and know what of our agreement has

been fulfilled. And let these twelve men have their meat together, and feed themselves so as they think themselves worth, and deal out the meat-leavings for a thanksgiving to God*." In like manner are, to this day, the "meat-leavings" dealt out to the poor, even down to the turtle-soup and capons of the Lord Mayor's annual dinner.

The object of this book is not so much to suggest any special arrangements, as to call attention to the fact, forced upon our notice on every side, of how important it is that all those who would really and in earnest undertake the task of bettering the condition of the people, should devote careful attention to those fundamental laws and institutions which our fathers inherited, and which we have inherited from them. It would be easy to show that, even in the matter of taxation and retrenchment, the best and truest light will be afforded by the investigation of the important practical bearing on that subject of the true principles of Local Self-Government. Several times in the course of these pages has this been seen †.

From whatever point of view, then, we look at the subject, the value and importance of that very groundwork of all our fundamental laws and institutions—LOCAL SELF-GOVERNMENT—are clearly seen. They cannot be magnified. To every thinking man, who looks upon his fellow-men as made for something better than to be driven hither and thither as a herd of animals, for something better than mere gold-finders, for something better than mere material machines; who considers them as *law-worthy*, and there-

* 1 Thorpe, 236.

† See, for instance, pp. 183, 194, &c. and 252 *note* and 261 *note*.

fore as progressive beings, as beings having rights and duties to fulfil, and social obligations to discharge ; it must be evident that the only way in which those obligations can be well discharged, those rights and duties well fulfilled, that progress actually ensured, the laws and institutions of the land maintained, and man himself be truly law-worthy, is by securing the existence, in full vigour and practical activity, and in every place, of the principle of LOCAL SELF-GOVERNMENT.

The following are extracts from the Questions and Answers alluded to at the close of the note to p. 335. Many more bearing upon the same subject might have been quoted than are here done. But they would take up too much space. Those given below occur intermixed with others spread over thirty-six folio pages. The determination to misrepresent the City of London, and to supersede its rights of local self-government, will be obvious to the most superficial reader. These answers were given several months before the present work was even contemplated.

Q. You admit the necessity of local re-organization in those particular cases where works are not combined, and where the powers of the existing local bodies are insufficient ?

A. I think that in all local arrangements we should have reference to the *principle* upon which, in reality, though we lose sight of it too much, they first originated. For instance, all those local institutions originated upon the principle that a certain number of persons should be united for those purposes which were most important. At that period certain objects alone were recognized as being important ; *as we improve in knowledge, we see that other things are equally or very much more important than those.*

Q. Are you not aware that one of the difficulties in passing a general measure for the necessary extension of local jurisdictions for the formation of competent drainage-areas is the *great objection* that people living in suburbs and closely contiguous to corporations have to being included within them in any way; so little is the benefit of their administration appreciated in their own neighbourhood?

A. I am certainly not aware of any such fact. It can, in any case, be only correct in one sense; namely, with reference to things as the corporations now exist. You might take the corporations as they existed before the Corporation Reform Act: they were then very different things practically from what they are now; and the Corporation Reform Act was only a very feeble and weak attempt to give them more vigour and reality. They exist in many places now to a very small degree; really little more than nominally. With the population of Birmingham it is almost a farce, because the powers which the corporation ought to exercise exist mostly in other bodies. If you gave to corporations the true functions of a corporation, then you would not have those persons entertaining a disgust to them, any more than they have a disgust to a parish vestry. They act under it, and parish vestries have never been subject to the same observations which corporations have. As corporations are generally understood,—as *entities* instead of *principles*,—they seem to me, as they actually exist in this country, to be essentially vicious in very many respects, but not *inherently* so.

Q. Are you aware that the Corporation of the city of London is constituted by the freemen?

A. The constitution of all corporate bodies is generally very ill understood.

Q. In the city of London it is constituted by the *election* of freemen?

A. It is commonly said to be so, I am aware.

Q. Are not you aware that the non-freemen inhabitants are numerically the majority of those in the position of wholesale dealers and others, persons of the largest amount of property?

A. I do not know whether they have the largest amount of property or not; but whether they have or not, it does not affect the question, because they might become citizens, and ought to do so; it is their own fault entirely; they have no right to complain; the remedy is entirely in their own hands. There is no body in the

world which is more completely an elective body in the majority than the recognized authorities of the city of London ; that is perfectly clear ; it does not admit even of a shadow of argument.

Q. Do you dispute the fact stated by witnesses, that the freemen are the minority of a minority of the inhabitants of the city of London ?

A. It is quite immaterial whether they are or not. You might as well ask, with respect to an election at any place, whether I disputed the fact that all the electors did not vote. It is a well-known fact that at very few parliamentary elections do more than two-thirds, and frequently not more than one-half, of those who are even on the register, vote ; which last form, again, frequently, but a minority of those entitled to be on the register : but those persons who do not vote have no right to complain ; they might vote if they chose. So it is with those persons in the city of London ; it is entirely their own fault if they do not become freemen of London. No one can possibly argue that they are persons who have not a voice in the election. They have their own remedy. They do not think that there is any injury to complain of, and therefore they do not exercise their power.

Q. Do you know what the fees for obtaining freedom are ?

A. They vary in various cases.

Q. Twenty pounds say ?

A. The amount is much less than this. I should think a man a very miserable creature who did not think the elective franchise worth £20.

Q. Then you consider that the Corporation of the city of London, appointed by a minority of a minority of the citizens of London, is as responsible as any local body ought to be ?

A. No ; that is quite a different question ; I do not contend that the Corporation of London, or any other corporation, is perfect ; on the contrary, I merely point to the principle on which locally constituted bodies originated. Taking the city of London, we take that as an example near home : but, when the point is raised about those non-freemen, I say that is a point which you cannot use, because men have the remedy in their own hands. If men stand by and see their houses knocked down, they have no right to complain, if they do not choose to exert themselves.

Q. Your ground of objection to the consolidation of the city of London would be on account of its antiquity ?

A. Not in the slightest degree. When I use the word “antiquity,” I use it simply on the ground that, by reason of its antiquity, many conditions have grown up which otherwise would not have existed.

Q. What should you say, *supposing* that under the Corporation of the city of London, it should appear that the charge per house in *waste* had been more than £5?

A. In the first place, I should like to see that; in the second place, having seen it, I should like to examine it; and, having examined it, I should like to see whether what may be made at first sight to appear in figures might not really be otherwise than it is thus made to appear. Those things have been going on through a vast period of years. It is very easy at the end of the time to sum them up and say, “So much has been spent.” You take, now, the latest improvements, and compare them with a time when that knowledge was not possessed; but the comparison is not a fair one.

Q. Are you aware that such is the state of the city of London, that not only houses are divided, but rooms are divided, and there are families in the corners of the rooms?

A. Undoubtedly.

Q. With a Common Sergeant, with a Recorder, with a City Solicitor and with all the powerful appliances, for the application of the law?

A. You might as well say that the Lord Chief Justice of the Court of Queen’s Bench is to walk round every hole and corner of the city of London! You may have legal officers, but it does not at all ensure the possibility in any country in the world of finding out every place where the law is infringed: and no human machinery can do it. The Recorder’s business is, when a case comes before him, to adjudge upon it, not to go out looking for it: he would then become, as has been very much the practice of late, both *client* and *judge in his own cause*.

Q. There is a statement presented to us of 2500 and odd inhabitants in 178 houses. Must not the very census itself point out the amount of over-crowding to the knowledge of those officers?

A. Certainly not. It depends upon whether they go into that neighbourhood or not.

Q. Are you not aware that, in the city of London, *which is so over-crowded*, there are Deputies and Common Councilmen for each ward, and ward inquests, ward inquiries, and a number of ward

officers? What can be the state of the performance of the duties when *the whole state of existence of the population is obviously and notoriously in violation of the law?*

A. That is begging the question in every respect; because, in the first place, we must know what the functions of these officers are. If they have to discharge certain duties, we must know whether they do discharge them or not. In the second place, it does not at all follow, because you show me that there are 2000 inhabitants in that condition, that London, as a whole, is in that condition. I do not admit that it is.

Q. Do you think that the examination must be correctly taken, and the basis narrow, of 2500 inhabitants in nine courts?

A. It is perfectly possible that there may be that amount of population in one district of London; but the corollary which you would draw from that does not at all follow from it; what follows from it is, that we should do what we can to remove it. It does not at all follow that we should beg the question.

Q. Then you do not think that it touches the question at all that there is the *notorious existence* of a large mass of an important population in a condition at variance with the law; that is to say, with tenements divided contrary to law, and not merely tenements, but rooms, extensively divided? Do you think that the *extensive generality of such facts forms no commentary at all upon the state of the local authorities, when, if they were working efficiently, such a state of things would not exist?*

A. It may or may not be; it entirely depends upon the other conditions. We cannot possibly predicate upon any *one* state of things what *others*, totally different in their relations, may be. That does not in the slightest degree prove that the Corporation of the city of London does not discharge its duty. We must know what its particular functions and powers are. Not one single question which I have heard here today has, in the slightest degree, shown that the conditions which are necessary to be examined into in this case have been looked at; certainly this last question least of any. I have not yet heard that there is a single individual whose duty it is, as a functionary, to do certain things which it is complained are not done. If, upon a cross-examination, without which no evidence can ever be got at, I find that there are certain functionaries whose province it is to discharge certain duties,—and that they do not discharge them,—then there is cause for complaint against them. I

have not heard the slightest allusion to that. The fact which has been referred to, of 2000 persons existing in certain houses whose condition ought to be remedied,—a representation of which, *speaking generally*, I have a very painful sense of the truth, and a strong desire to see practical measures adopted for its removal,—does not at all prove that the Aldermen and Common Councilmen, and so on, do not discharge the duties for which they are elected. We must have very different evidence indeed before we can get at any principles of legislation; and it is because not one iota of that sort of evidence has been published yet that I complain, most grievously, of the attempt to give statutable effect to an ill-considered and purely theoretical measure which can only be productive of the most grievous mischief, as every really practical man knows.

Q. That is your opinion?

A. It is my opinion.

Q. Taking these 2500 persons *as a specimen of other courts and alleys and other places*?

A. I do not admit that it is a specimen.

Q. We do not ask your opinion whether such a number may be sufficient; but, *supposing it to be so, supposing all the rest of the courts and alleys to be in the like condition*, or nearly so, occupied by the labouring population, in that state of filth, and with that subdivision of tenements, *that* in your mind would afford not the slightest ground for doubt, either as to the state of administration or the sufficiency of the law?

A. *That is quite a different thing.* You first make a postulate, and then ask my opinion. I do not admit the postulate: I cannot have my evidence asked for, and then a set of postulates stated, *not one of which I admit.* UPON PREMISES WHICH ARE NOT CORRECT YOU MAY FOUND ANY CONCLUSION WHATEVER. I utterly deny and dispute every one of these postulates. I do not yet know that it is the case that those picked specimens of courts and alleys fairly represent the condition of "*all the rest of the courts and alleys.*" Nor do I believe it. I know that it is the case that, in very many courts and alleys, things exist which ought not to exist, but that it is quite a different thing from acknowledging a general charge. I do not admit, or deny, what is the state of all the courts and alleys in London. I know that there is a great deal of wretchedness and misery. But this is quite a different thing from admitting a set of *postulates*, and admitting many things which I know to be most incorrect, be

it as a landlord, a tenant, or a lawyer. *Such sweeping assumptions merely amount to a total denial of evidence.*

In reference to some of the observations in the note, p. 335, it is felt right further to quote the following questions and the answers to them.

Q. Are you not aware that separate returns were made for St. Bartholomew the Great, which was part of the city of London without the walls, and also for St. Botolph, Aldgate, in the *cholera returns* of that day?

A. You must really not ask me about the city of London, because I have no particular means of information whatever; I have merely seen the returns which are in the hands of parliament, and various others; I have no connexion whatever with the city of London.

Q. You say that you go through the city of London, but admit that you have never gone through those places?

A. But I stated, at the same time, that I had made certain inquiries. I never had any personal interest whatever in the city of London. I know very few people there. I have no interest in the city, nor vote in the city. I have read the statements which have been put forth, and have also taken occasion to refer to several parliamentary returns; and it is from comparing all these various things together that my information is derived. It seems to me quite a different question to consider whether those things exist, and whether particular individuals who happen to be members of the corporation have done their duty.

CHAPTER IV.

LAWFUL METHODS OF SPECIAL AND GENERAL INQUIRY.

"All bad customs shall forthwith be inquired into in each shire by twelve sworn knights of the same shire, who must be chosen by the good men of the same shire."—Magna Charta Johannis, c. 52.

"For maintenance of the said articles and statutes, and redress of divers mischiefs and grievances which daily happen, a parliament shall be holden every year."—Statute 36 Ed. III. c. 10.

"Leave all causes to be measured by the golden and straight metwand of THE LAW, and not to the uncertain and crooked cord of DISCRETION."—Coke, 4 Inst. 41.

It is not wished to indulge, in this work, in any speculative views. The object is directly practical. Attention has, therefore, throughout been fixed upon facts ; facts which are equally incontrovertible and important. And it is confidently felt that, by a thoughtful comparison of the facts thus brought together, a light, clear and not to be put out, will be thrown upon what it is that constitutes the difference between a healthy and an unhealthy state of the social and national union ; upon what it is that ensures confidence to individuals, security to person and property, reliance upon self-dependence, and, therefore, encouragement to enterprise and energy. We shall thus see, on the other hand, what it is that gives rise, and always must give rise, to a sense of insecurity and uncertainty among all thinking men, to vexatious interference with personal and private rights, and to capricious re-

straints on enterprise and energy ; and which, therefore, must necessarily breed feverish discontent, and foster dangerous, however for a time silent, tendencies to the disorganization of society. It is, in a few most expressive words, that we are departing more and more each day from the “ golden and straight metwand of *the law*,” and allowing ourselves to be drawn in bondage to the “ incertain and crooked cord of *discretion*.” We are losing sight daily, more and more, of *principles*, and allowing ourselves to be made the dupes of presumptuous *empiricism*.

This subject might be followed out in all its various applications. But the following it out in even any one branch might seem to some to be entering on that speculative ground which it is desired to avoid. That work shall therefore be forborne. The one grand principle which is seen to stand out the more prominently at every step that has been taken,—obeyed by all the fundamental laws and institutions of the land, violated by the whole system of Commissions,—is the paramount importance to human welfare and advancement of every encouragement being given to *self-depending energy*. It has been seen that it is only when the putting forth of that self-depending energy is placed under the protection of *the law*,—that is, of law based on fixed, and known, and fundamental principles,—that it can ever show a vigorous and healthy growth ; that every departure from that course, every substitution of irresponsible *discretion* for certain and known *law*, always has been, and always must be, “ an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government.” The “ golden and straight metwand of the

law" is in direct antagonism with the whole system of Centralization and its fit machinery, Commissions ; while that system of Centralizement and those its instruments and machinery are consistent only with that not less dangerous than "incertain and crooked cord of *discretion*."

Lest, however, amid the various objects to which attention has been directed in the three preceding chapters, the main point, to illustrate which alone those objects can be usefully considered, should escape being fixed sufficiently upon attention, it will be well to make a few remarks upon the general result, which is brought before the mind only the more clearly and forcibly, the more carefully and long this subject is considered, and reconsidered, in all its bearings.

The end of human society is the cultivation, to the highest extent consistent with their healthy and harmonious action, of all the faculties of men. Human society is essentially progressive. It has been strikingly seen that the ancient system of the national political and social union in this country tended to the development of all the faculties of men, and that, the more that system has been departed from, the more has that development been cramped and dwarfed. There has been seen to prevail a Unity through the whole system, which, while it effectually provided for the efficient maintenance of the national union, provided equally for the free and vigorous development of every individual and self-dependent energy.

Every thinking man, not interested in a corrupt system, must necessarily admit that the surest way to *dwarf* the development of either intellectual or moral energies is to cultivate a feeling of dependence and

reliance upon, and continual looking up to, others for every rule of action ; and that the surest way to *promote* that development is to make men self-dependent. It has been seen that the system of Commissions is the necessary fosterer of the former condition of things ; the system of our Saxon fathers,—that of self-government, beginning with the smallest local district and going up to the Common Council of the whole realm in Parliament,—is the equally necessary fosterer of the latter condition of things. It has further been seen*, that there is only one principle upon which the law can, with efficiency, and, at the same time, with safety and security to person and property, be put in activity ; with which principle the whole system of Commissions is as much in antagonism as the Saxon system is in perfect harmony.

Let us now then very briefly glance, for the better illustration of this subject, at the mode in which that system which alone is consistent with the fundamental laws and institutions of the realm would, if unimpeded by existing usurpations and obstructions, naturally operate towards the great work of progress. We will not touch here at all upon matters relating to *individual* claim or charge. That subject has been sufficiently discussed in the 3rd chapter of the former Book. It is sufficient that attention be fixed upon the fact, that *every one* of the requisites there stated must be present in every case, before the rights of person and property of every man can be really protected ; and so the full pledges for human progress given, and every man be truly *law-worthy*. The presence of one or two only of the requisites, without the others, will,

* Book I. Ch. III.

at the best, be only a mitigation of the evil ; often not even that, the more essential requisites to truth-seeking being still wanting.

On pages 92, 94, 160, 180, and in other places, it has been shown what are the true and distinctive functions of local self-government, and of the Common Council of the whole realm in Parliament, and what are the respective limits of those functions. They are clear and well-defined. If those several passages are thoughtfully considered ; and if the remarkable declaration of law on the subject of Police (p. 63) is considered ; and if the first two passages, also from the fundamental laws of the land, quoted at the head of this chapter, are considered ; and all these are compared together ; the true and respective functions of institutions of local self-government and of the Common Council of the nation, and their respective limits, cannot be misunderstood.

Progress depends on the *maintenance* of that golden and straight metwand of the law by which the results of every self-depending energy are undoubtingly protected ; and on the felt consciousness that *redress* will follow every outrage or usurpation.

We see that, from the remotest times, provision was made for finding out and inquiring into, on a wholesome and sound principle, all “ bad customs ” which might have grown up in any place through accident or gradual change of circumstances. For this purpose a jury was to be impaneled of those having most opportunity of knowing the facts,—subject to all the rules as to indifferency and challenge which have been dwelt on. The same thing would always be effected, on the same principle, as the necessary re-

sult of a genuine and active system of local self-government*.

Parliament, on the other hand, has to see that, while local self-government is maintained unimpaired in all its integrity, the general and universal law suffers no detriment; and that no violation of it is attempted by any to whom authority has been entrusted.

There is nothing which occasions more loss of time, annoyance, and harassment to members of parliament than what are termed "*private Bills*." How greatly would parliament be relieved of an irksome and ungrateful duty, and how much better would the desired end be answered, if, before any local Act could be introduced into parliament, it were obliged, by the standing orders of the House of Commons, to have been submitted to the ordeal of, and been formally sanctioned by, the Institution of Local Self-Government of the district within which it is intended to be carried into operation†! Thus it would be tried before those having every best opportunity of knowing the merits of the case; and there would be no danger of any interest being unrepresented; no danger of an obnoxious act being smuggled through parliament by a few projectors, unknown to the mass of the inhabitants, as now so often happens. Not only would the real merits of every such question be thus fully and truly brought out—which, under the ordinary present practice, they can never be before a committee of the House of Commons,—but an enormous amount of expense would be saved which is now necessarily incurred in the conducting every private Bill through the House.

It is unnecessary to follow up this suggestion at

* See before p. 118, &c.

† See, as above, p. 118, &c.

any length. It is merely mentioned in order to show how very greatly, if the true principle of the national union were carried out according to the fundamental laws and institutions of the country, the duties now devolving on parliament would be lightened to parliament itself, and better discharged as regards the interests of the community.

It is well known that this very suggestion is practically carried out in bills originating with the Corporation of the city of London. They are first approved by the Common Council, and specially by some committee of that body, and then submitted to parliament.

It is clearly necessary that all such bills should thus be submitted to parliament, the common representative of all local districts, for final sanction: and for these two reasons. *First*, the interests of those beyond a limited district may be affected by any such measure. Parliament represents the interests of *all* localities. It stands as the umpire between any several ones. Its final sanction is a verdict that the special interests of none are invaded by the proposed measure which has already been pronounced, by those best acquainted with the *immediate* facts, to be beneficial to the immediate district where it is designed to carry it into execution. *Secondly*, it must always be of the highest importance to the general welfare and progress, that uniform and definite principles of law universally prevail; that there be no antagonism between the principles prevailing in one district and those prevailing in another,—as is now too often the case even in adjoining local districts *. It would be the duty of parliament, therefore, to see, not only that the *special*

* See Laws of England relating to Public Health, pref. ix. and pp. 3, 7–10, 124, 126.

interests of one place are not advanced at the expense of those of another, but that no proposition determined on by any one local district embodies any matters which would necessarily, on this *general* ground, be adverse to the general interests of the community. This point will be felt to be rather a part of, than distinct from, the one above named ; but it is of such importance as to deserve separate specification. It is the high, peculiar, and most important function of parliament to maintain, through the whole land, the supremacy of certain fundamental laws and institutions, and to prevent the encroachment on, or evasion of, those laws and institutions either by individuals who may happen to be entrusted with authority, or by any local districts, or private company of speculators, whose special interests may be imagined likely to be thereby advanced.

It must be self-evident that the true dignity of parliament would be greatly increased by the position which it would hold under the practical carrying out of such a system. Thus it is that the dignity and best efficiency of parliament is identified with the dignity and fullest efficiency of institutions of local self-government. What has been urged will be merely the giving a real effect to the fundamental laws and institutions of the land*.

And the same principle which suggests the adoption, as to all *local* measures, of the course thus named, as the best means to get at the real truth and merits in every case, and so really to achieve a work of progress and not of obstructiveness, should be the guide in measures which are of a clearly *general* character,

* See also before, p. 98, and 4 Inst. 14, there quoted.

and which it therefore forms the peculiar province of parliament itself to discuss and consider. Under true institutions of local self-government there would always, as shown in the last chapter, be a legitimate as well as reliable and sound expression of public opinion upon every measure, just as it was shown (p. 50) must have been generally the case as to measures brought in ancient times before the Great Council of the whole realm. Whatever laws were passed, moreover, it would be the peculiar province of the institutions of local self-government to carry them out ;—as in William's reign the law of watch and ward, determined on by the Witenagemote, was to be *carried out* entirely by the local authorities (p. 63). The common guide and rule of all would be, and this is the grand and most material point, the golden and straight metwand of the general law thus ordained, and *not* the uncertain and crooked cord of the discretion of any man or Commission to whom any general superintendence should be entrusted.

Parliament, we have seen, is for the *maintenance* of the laws and statutes, and for the *redress* of mischiefs and grievances. This has ever been the great function of Parliament. It is a high and noble function. And there has always been a recognized machinery for this purpose, as already alluded to, p. 180.

“The Commons,” says Coke, “being the *general Inquisitors of the Realm*, have principal care in the beginning of the parliament to appoint days of committees ; namely, of grievances, of courts of justice, of privileges, and of advancement of trade*.” We know that committees are every day appointed, now,

* 4 Inst. 11.

for various purposes. But it is also well known that a practice of appointment has grown up by which a committee is, to a great extent, *nominated* instead of being indifferent. The principles enunciated in Ch. III. of the former Book apply to every class of inquiries and of inquirers. They apply, of course, to inquiries in parliament as much as to inquiries elsewhere. Parliament offers peculiar advantages for the full and impartial investigation of the truth. However much many men may delight to sneer at the House of Commons, no sensible man can doubt that a large proportion of the members are of a superior class of mind,—better able than the ordinary average to investigate, *if indifferent and impartial*, any question that may come before them. It is certainly very easy to arrange a plan, in accordance with the true principle of the fundamental laws, by which the indifferency and impartiality of the members of any committee which shall sit upon any question may be ensured. It may perhaps be permitted to me, without an appearance of presumption, to suggest, rather by way of illustration than as definitely offering a proposition, one very simple and obvious plan by which this object might be accomplished.

The House of Commons may be said, in round numbers, to contain 600 members liable to committee-duty. It might be made the first business of each session to divide the House, by ballot or otherwise, into committees,—say of ten members to each committee. This would give sixty committees, each ready for service when called upon. Any matter for which the appointment of a committee was thought desirable should be submitted, in rotation according to an order

previously determined on, to these committees. It would be quite impossible that any charge of unindifferency, of partiality, or packing, could be brought against any such committee, as it might easily be so arranged that it could not be foreseen to what committee any subject should be committed. There would thus be every probability, so far as human foresight could secure it, of every question having a searching and thorough examination. Relieved of the vast and onerous duties of committees on local bills,—except in the few cases where circumstances made that step desirable, and which would, of course, remain always open,—full time might be given to those thorough and searching investigations; the fact of which being so made on every occasion, when necessary, would cause the necessity for their frequency to become continually less great. It would be important that it should be a standing rule that, in addition to the committee which, by rotation, sat on any matter, the proposer of any committee should always form one of the body. This would ensure the full opening of the question. It might be a matter well worthy of serious attention, whether, on the grounds put in pp. 115, 116, it would not be for the advantage of truth that it be a standing rule that skilled counsel be always retained to examine and cross-examine witnesses, on each several side, in every question. The expense would be trifling, while the probability of truth being more thoroughly elicited would be very greatly increased.

The proceedings before Committees of the House of Commons have always been conducted in a much more unobjectionable form than, under any circum-

stances, before Commissions of Inquiry. It is hardly possible for those Committees, even as now nominated, ever to have the radical defects of the latter. The two cannot be compared together for a moment. But the constitution of the former is undoubtedly capable of improvement.

Committees of the House of Commons and Lords are the *only lawful, and can be the only useful, methods of general investigation and inquiry*. Commissions of Inquiry, if illegal on no other ground, would be illegal as an invasion of this unquestionable prerogative and function of Parliament, and more peculiarly—and as admitted from the most ancient times—of the House of Commons.

Either Commissions of Inquiry, under any form whatever, must be at once and for ever again prohibited, or Parliament is bound to, avowedly,—as it does, by permitting them, actually,—abrogate its functions, and give back again to the people that trust which it has received from them, but which it thus proclaims itself either unable or unwilling to discharge.

It is quite idle and false to pretend that any *time* is saved by Commissions of Inquiry. Time is really lost. This might be shown at great length were it necessary. It is conceived that it will be sufficient to refer to such cases* as the Committee on Woods and Forests, the Committee on the Ecclesiastical Commission, or the Committee on the Andover Poor-Law Case, as instances of how the time of the House of Commons is always, sooner or later, under the existing irregular and illegal practice, taken up with matters which, if sub-

* See also, before, Chap. I. p. 230, &c.

jected to a searching investigation in the first instance before that tribunal, would never have given those illustrations which they now do of a corrupt, illegal, and mischievous system.

I have dwelt on these means of investigation and true inquiry because,—while such means are clearly essential to the *maintenance* of the principles of the national union and to the *redress* of every usurpation,—it must be no less clear that *progress* implies continual watchfulness, and the continual endeavour to see beyond the present and immediate. I have, from the first page of this volume to the present, maintained, and I have proved, that the entire system embodied in the fundamental laws and institutions of this country is peculiarly adapted to work out human *progress*; inasmuch as, by those fundamental laws and institutions, “straightforward simple means are provided, of the *fullest, completest, and most efficient* character, for getting, in a regular, legal, and open course, at all and any information which can ever be needed and useful,” and for opening up “every possible subject which it can be for the interest of the public should be inquired into and thoroughly investigated*.” I have shown that the whole system of Commissions has, on the contrary, the *necessary effect* of smothering the truth—of obstructing investigation and true inquiry—of promulgating individual and interested schemes or crotchets, instead of careful, reasoned, elaborated truth: that it is a system whose necessary result will always be, in a greater or a less degree, to dwarf the development of the human facul-

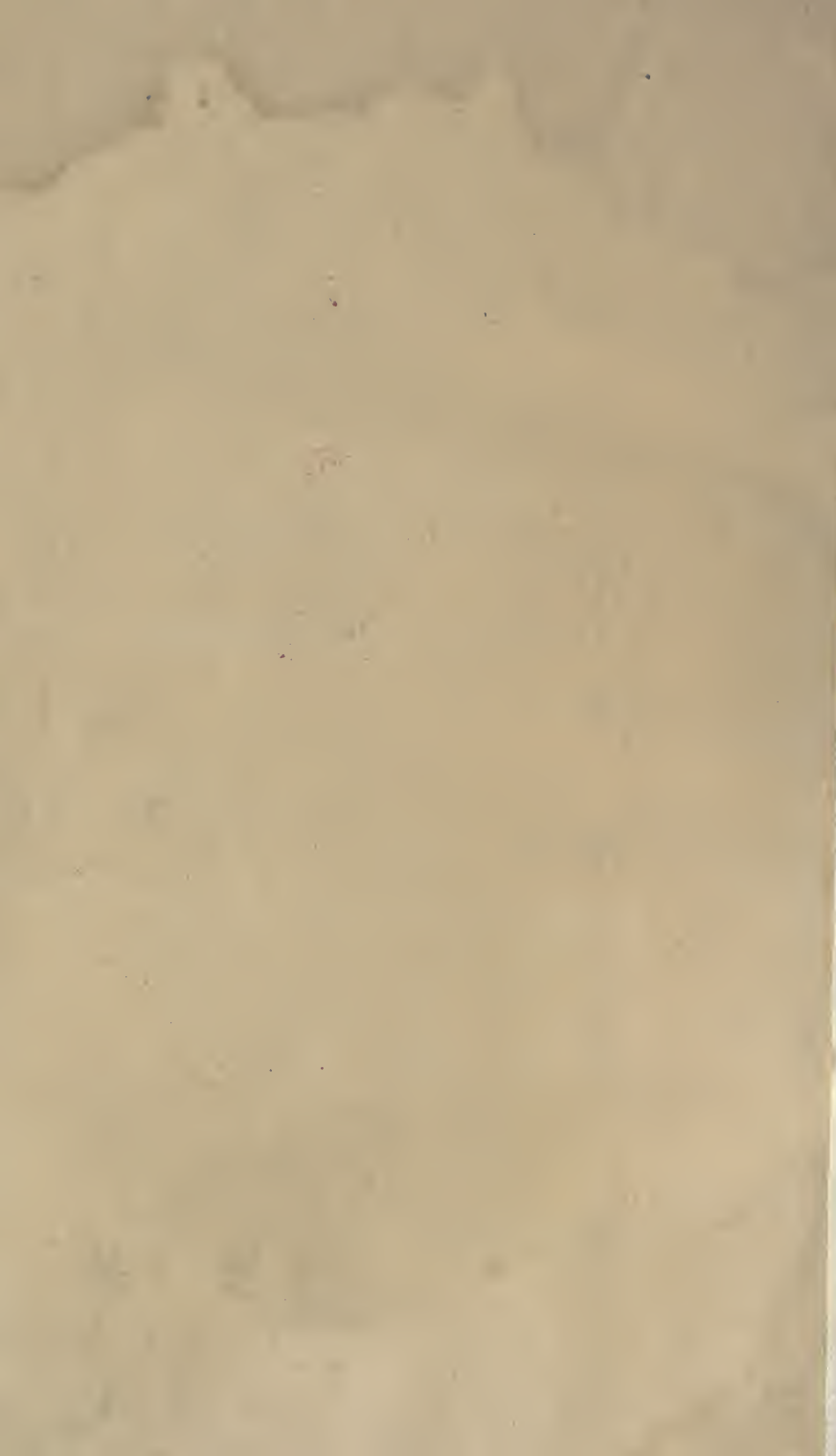
* See before, pp. 170, 180.

ties, and to check the putting forth of those energies which can never have free play but under that system with which it is in direct and express antagonism,—the system of *individual, local, and general self-dependence*.

Shall England then go on in the race of Human Improvement? Shall she maintain the position so nobly won and so long sustained in the van of the nations of the earth? Or shall she stand still while others pass beyond her? But she cannot stand still. Either she must go on or retrograde. Those who would seek personal aggrandizement, who think the strife for the selfish prizes and petty vanities of place a worthy one, and who care not whether England go on in the mighty race, or whether she fall in the rear of the nations she has hitherto led on, will still uphold the system of GOVERNMENT BY COMMISSIONS. Those, on the other hand, who, with a worthy pride in their country's greatness,—as a greatness achieved by free and manly institutions, and by the putting forth of self-depending indomitable energies,—desire to see her still go on in the same noble course which has marked her history for a thousand years, will earnestly strive to widen, instead of thus narrowing, every opportunity for the still more and more continually, and more successfully, putting forth those self-depending energies. They will, therefore, devote themselves to the task of battling with every system which violates the proved Fundamental Laws and Institutions of the Land. They will, therefore, at this time especially, put forth every strength to sustain, not only unimpaired, but with a renewed and disencumbered vigour, “ those

good old laws and customs of England, THE BADGES OF OUR FREEDOM; the benefit whereof our ancestors enjoyed long before the Conquest, and spent much of their blood to have confirmed by the great Charters of their Liberties; and WHICH HAVE CONTINUED IN ALL FORMER CHANGES," our " NOBLEST INHERITANCE AND BEST BIRTHRIGHT."

FINIS.



PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY

JN
407
S55

Smith, Joshua Toulmin
Government by
commissions illegal and
pernicious

